

VIETNAM
GUIDELINES FOR EXAMINATION OF INDUSTRIAL DESIGN APPLICATIONS

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Chapter I GENERAL PROVISIONS

Article 1. Contents of the Guidelines

These Guidelines are issued to guide examiners to accomplish tasks regarding the examination of industrial design applications, including formality examination, substantive examination, and some other tasks in connection to activity of the examination of applications.

Article 2. Interpretation of terms

In these Guidelines, the terms below are construed as follows:

1. "Law on Intellectual Property" refers to the Law on Intellectual Property No.50/2005/ QH11, passed by the 11th National Assembly on November 29, 2005 at the 8th National Assembly session, as amended and supplemented according to Law on amending and supplementing a number of articles of the Intellectual Property Law No.36/2009/QH12 passed by the XII National Assembly on June 19, 2009.
2. "Decree" refers to Decree No.103/2006/ND-CP of the Government dated September 22, 2006 on detailing and guiding the implementation of a number of articles of the Law on Intellectual Property regarding industrial property.
3. "Circular" refers to Circular No.01/2007/TT-BKHCN of the Minister of Science and Technology dated of February 14, 2007 on guiding the implementation of Government Decree No.103/2006/ND-CP of September 22, 2006 on detailing and guiding the implementation of a number of articles of the Law on Intellectual Property regarding industrial property.
4. "Application" refers to an application for registration of an industrial design.
5. "Classification index" means the index of industrial design classification stated in the application according to the Locarno Classification of Industrial Designs (according to the Locarno Agreement).
6. "Application owner" means the subject named in the Declaration form of industrial design registration according to the provisions of point 2.1 of the Circular;
7. "Applicant" is generally referred to as the application owner or the representative of the application owner as prescribed at point 5.4 of the Circular.
8. "Registration object" means the object stated in an application.

Chapter II FORMALITY EXAMINATION

Article 3. Purposes and contents of formality examination

The purpose of formality examination is to check whether the documents included in the application comply with prescribed formalities so that conclusions can be drawn about the validity of the application.

The formality examination includes the following:

1. To check mandatory documents which must be in an application;
2. To check presentation formalities of the documents contained in an application;
3. To determine the owner, designer of an application;
4. To determine the right to registration of an application owner;
5. To assess the compliance with means of filing;
6. To check power of attorney in case applications filed through representatives;
7. To assess whether the subject matter of an application for design registration comply with requirements for grant of industrial design patent;
8. To assess a full disclosure of a design sought for registration;
9. To conduct a preliminary assessment of the unity of an application;
10. To determine the right of priority;
11. To check the payment of prescribed fees and charges;
12. To determine the index of industrial design classification;
13. To determine the filing date of an application;
14. To making conclusion whether the application is valid.

The formality examination is carried out and recorded in the IPAS System.

Article 4. Check on mandatory documents which must be in an application

1. To check whether the application contains all the compulsory documents as prescribed in Article 108 of the Law on Intellectual Property and Point 7.1 of the Circular, including:

- a) The Declaration form (in which information on the name and address of the application owner must be stated);
- b) Set of photos/drawings of the industrial design;
- c) Description of the industrial design;
- d) Payment receipt of application filing fee.

2. To check whether the application contains all the documents as defined in paragraphs 1 and 3 of Article 100 the Law on Intellectual Property, including:

- a) Power of attorney (for the case of applications filed through representatives);
- b) Documents evidencing the right to registration if the application owner

enjoys that right from another person (e.g., by inheritance certificate, certificate or agreement on transfer of the right to file an application, including transfer of filed application; labor contract, etc.);

c) Copy of the first application if the application claimed for priority right under an international agreement or a bilateral agreement;

d) Documents certifying the exhibition display, publication in scientific reports or documents proving the publication of industrial design without consent of the application owner;

e) Payment receipts of fee for publication of the application, fee for requesting enjoyment of priority right (if there is a request for enjoying the priority right), search fee, and substantive examination fee.

3. To check a number of sets of industrial design photos/drawings contained in the application to ensure whether there are 5 sets as specified at point 33.6 of the Circular.

4. If the check on paragraphs from 1 to 3 of this Article came to conclusion that the requirements specified in Points 7.1 and point 33.6 of the Circular are not met, then respective errors are to be classified in accordance with Articles from 5 to 15 below.

Article 5. Check on presentation formalities of the documents contained in an application

1. To check whether the documents included in the application satisfy the presentation formalities specified at points 7.2 and 10.1 of the Circular.

2. The following omission causes the application to not meet the requirements of formality:

a) The application is made in a language other than Vietnamese – This does not meet the provisions of point 7.2.b of the Circular, except for the cases specified at points 7.3 and Point 7.4 of the Circular;

b) The presentation formality of the documents does not meet the requirements specified in point 7.2 of the Circular;

c) The Declaration is not made in accordance with the prescribed form, the information in the Declaration is incomplete as prescribed in point 7.2.b. (iv), Points 10.1 and Point 33.4 of the Circular;

d) Documents in the application are written by hand and/or in fading ink with erasure or correction which affect the contents of the document – this fails to meet the provisions stated at point 7.2.b. (vi) of the Circular.

Article 6. Determination of the owner, designer of an application

1. The information about the application owner or designer must be stated in respective sections of the Declaration or in the Request for assignment/transfer of the right to file applications.

2. The following omission causes the determination of the application owner, designer impossible:

a) The information about the application owner is insufficient or inconsistent (e.g., lack of address, address is incomplete, address of the application owner stated in the Declaration and in Power of Attorney is not the same) - This fails to meet the requirements specified at point 7.2.d of the Circular;

b) The Declaration lacks the signature of the applicant, or signature of the applicant is erased or corrected, or the signature is not being sealed in case the signer is a legal representative of a Vietnamese legal entity/the seal of the application owner does not match the information of the application owner - this fails to meet the requirements specified at point 7.2.b.(iv) of the Circular;

c) The Declaration lacks information about the designer or the information about the designer lacks the address/nationality of the designer - this fails to meet the requirements specified at point 7.2.d of the Circular.

Article 7. Determination of the right to registration of the application owner

1. The right to registration of an application owner shall be considered lawful in the followings:

a) The application owner is a person who is also the designer;

b) The application owner is a legal entity; in this case the designer declared in the application is automatically deemed to be assigned by the application owner to perform the task of creating the industrial design to be sought for registration, unless they have a different agreement in writing attached to the application;

c) There is a document proving the lawful right to registration in case the application owner enjoys this right from another person (e.g. by inheritance certificate, certificate or agreement on transfer of the right to file the application, including transfer of filed applications; work contract or labor contract etc.).

2. The right to registration of the application owner shall be considered illegal if there is grounds to confirm that the application owner does not have the right to registration, specifically in the followings:

a) The application owner is a person, but the designer is someone other than the application owner;

b) The application owner is a legal entity, but not the one declared in the first application if the priority claim is made in the application;
In this case, the applicant needs to supplement document(s) proving the lawful right to registration if the application owner enjoys that right from another person (e.g. by certificate or agreement on transfer of the right to file the application, including transfer of filed application).

Article 8. Assessment of the compliance with means of filing;

1. In the followings, means of filing an application shall be deemed consistent with the provisions of Article 89 of the Law on Intellectual Property:

- a) The application is filed through a legal representative in Vietnam;
- b) The application is submitted directly by the application owner, if the application owner is a Vietnamese organization or person, a foreign person permanently residing in Vietnam, a foreign organization or person that has a production and/or business establishment in Vietnam.

2. The means of filing an application shall be deemed inconsistent with the provisions of Article 89 of the Law on Intellectual Property in cases the application is filed directly by the application owner who is a foreign person not permanently residing in Vietnam, a foreign organization or person that does not have a production and/or business establishment in Vietnam.

Article 9. Check on Power of Attorney in case an application filed through the application owner's representative

1. An application may be filed through branch/representative office (if the application owner is a legal entity) or through an industrial property representation service organization (if the application owner is a person or a legal entity). In these cases, the application must contain the Power of Attorney of the application owner. The Power of Attorney must meet the requirements specified at points 4.2 and point 7.2 of the Circular;

2. An application shall be considered as erroneous in the followings:

- a) Lack of Power of Attorney of the application owner or a document defining the authorized functions of the branch/representative office - this fails to meet the provisions specified at point 4.2, 7.2.a of the Circular;
- b) Lack of original Power of Attorney - this fails to meet the provisions of point 4.2, point 7.2.a, Point 13.3.c of the Circular;
- c) The authorization letter does not contain in full the details specified at point 4.2 of the Circular;
- d) The Power of attorney is invalid because the scope of authorization for industrial design registration is not mentioned in the original Power of

Attorney – this fails to meet the provisions of point 7.2.d of the Circular.

Article 10. Assessment of whether the subject matter of an application for design registration comply with requirements for grant of industrial design patent

1. An object stated in the application shall be considered compatible with the requirements for the grant of industrial design patent if the following requirements are fully met:

- a) Applicable to a specific product;
- b) The appearance of a product must be visible and judged by the eye;
- c) A product embodied as an industrial design should be made in industry or handcraft, has distinct structures and functions, and can be traded as an independent product (e.g., appliances, tools, equipment etc.).

2. An object stated in the application shall be considered unable to be judged by the eye if an product consist of substances in the form of powder or granules, such as a collection of small particles, sugar, salt, washing powder, etc., except the case the collection of small particles is molded into a specific form.

3. The possibility of being traded as an independent product shall be considered satisfactory if the product in question falls in one of the followings:

- a) A complete or finished product which is assembled from different parts, components. This category includes gadgets, tools, equipment, vehicles, utensils, clothing, food, pharmaceuticals, solid fuels, materials, boxes, packaging, etc. Bar products that have unlimited lengths, with a constant or changeable cross-section in a repetitive manner along the length of the bar product (such as shaped metal bar), two-dimensional products having an unlimited area with surface decorated with repetitive patterns (such as fabric, wallpaper, paper tape, etc.) also fall into this category.
- b) A part or a component constituting a finished product in disassemble way by mechanical bonding or by adhesive, suturing or welding etc., being mass-produced so that they can be interchangeable. This type includes product labels, which are understood as thin-sheet parts with decorated surfaces and are being affixed or attached to the surface of another product to form a finished product.

4. The possibility of being traded as an independent product shall be considered unsatisfactory if the product in question falls in one of the followings:

- a) A part/element that cannot be isolated from the product or can only be isolated by destroying the product and no similar part is available to replace

it;

b) A decorative facet which is created directly on the surface of a finished product in the form of patterns, lines or by painting, drawing directly on the surface of the finished product and cannot be isolated from the product in the ways specified in point 3.b) above.

5. The subject sought to be registered shall be considered ineligible for the requirements for the grant of an industrial design patent if there exist solid grounds for immediately confirming that the subject in question falls in one of the subject matters excluded from protection by the State as prescribed in Article 64 of the Law on Intellectual Property.

Article 11. Assessment of full disclosure of a design sought for registration

1. An industrial design sought for registration shall be considered fully disclosed if it is applied to a specific product shown on a set of photos/drawings that fully meets the requirements specified at point 33.6 of the Circular and at the same time is presented in the description which fully meet the requirements specified at point 33.5 of the Circular.

2. The design sought for registration fails to be fully disclosed if it has omission in the following:

- a) The name of industrial design is contrary to the provisions of point 33.5.a of the Circular;
- b) The description does not contain all items and contents as prescribed in point 33.5 of the Circular;
- c) The set of photos/drawings fails to meet the requirements specified at point 33.6 of the Circular;
- d) The industrial design shown on each set of photos/drawings is not the same or not the same with the industrial design presented in the Description – this is contrary to the provisions of points 33.5.e and 33.6.a of the Circular;
- e) There are no sufficient photos/drawings viewing from different angles/positions or lack of cross-section drawings etc. of the industrial design so that the contents of the industrial design in the application cannot be identified accurately as prescribed in point 33.6.g of the Circular.

Article 12. Conducting a preliminary assessment of the unity of an application;

1. A standard of unity of the application is considered to be met according to the provisions of Clause 3, Article 101 of the Law on Intellectual Property if deals with:

- a) an industrial design of a product; or
- b) different variants of industrial designs of a product; or

c) industrial designs of multiple products in a set of products, of which each product has its respective industrial design.

2. The application fails to satisfy the standard of unity according to the provisions of Clause 3, Article 101 of the Law on Intellectual Property and point 33.2 of the Circular if the industrial design sought for registration does not belong to one of the cases mentioned in point 1. above, specifically deals with:

- a) different variants of the industrial designs applicable to products of different types; or
- b) industrial designs of multiple products of different types, but do not belong to a set of products.

Article 13. Determination of the right of priority

1. Applications shall be given priority right if they fully meet the provisions of Article 91 of the Law on Intellectual Property, points b, c and d of Clause 1, Article 10 of the Decree and point 13.5 of the Circular. Specifically, the priority right of an application is recognized if the following requirements are fully met:

- a) A claim for the priority right is stated in relevant section of the Declaration;
- b) The basis for enjoying the priority right of the application complies with Clause 1, Article 91 of the Intellectual Property Law, points b, c and d, Clause 1, Article 10 of the Decree;
- c) A copy of the first application with certification of the first receiving agency (the original) submitted within the prescribed time limit;
- d) The Vietnamese translation of the first copy of the application, if requested, submitted within the prescribed time limit.

2. The priority right of an application has not been accepted if falls in one of the followings:

- a) The basis for enjoying the priority right of the application does not fully meet the provisions of Clause 1, Article 91 of the Intellectual Property Law, points b, c and d, Clause 1, Article 10 of the Decree;
- b) Lack of a copy of the first application, certified by the first receiving agency (original copy);
- c) Lack of the Vietnamese translation of the first copy of the application as specified in point 7.3.c of the Circular, which is used to identify information about the application owner in the first copy of the application.

Article 14. Check on payment receipts of charges and fees

1. An application satisfies the requirements for charges/fees if it includes in full filing fee, fee for application publication, fee for claiming priority right (if there is a claim for priority right), classification fee (if applicable), research fee for serving substantive examination and substantive examination fee as provided for in points 8.1 and 8.2 of the Circular.

2. For a divisional application, the charge/fee requirements are checked according to the following principles:

a) Fees/charges paid for work not yet performed in the original application, may be transferred to the divisional application if this is clearly stated in the application;

b) The publication of the divisional application is made independently of the original application;

c) In case the essential features [that express the nature] of the industrial design in a divisional application do not vary from those of the original application, the search fee or substantive examination fee is not necessary to be requested; The search results and substantive examination report which were already required at the original application will be used to draw conclusions on the divisional application.

d) The search and substantive examination fee for the divisional application must be paid if the design in the divisional application varied from those of the original application. The relevant fees/charges must also be paid in full for the additional variants from the time of dividing the application.

3. The application shall be considered as not meeting the requirements regarding charges/fees if the applicant did not pay or paid not in full at least one of the following fees: fee for publication of the application, fee for claiming priority right (if there is a claim for priority right), classification fee (if applicable), search fee for serving examination, substantive examination fee as provided in point 13.3.b of the Circular.

Article 15. Types of errors not affecting validity of application, but the applicant must remedy such errors during the substantive examination stage

1. Name and address of the application owner, designer, or representative are incorrectly typed or abnormally abbreviated, etc., but this omission does not affect the accurate determination of such information;

2. The industrial design description contains some typing errors or uses some uncommon terms but this omission not leading to misrepresentation of the essential features of the industrial design in the application.

3. Other minor errors.

Article 16. Types of errors causing an application not to be accepted as valid and the applicant must remedy such errors in order for the application to be accepted as valid

1. The application has one of the errors mentioned in Clause 2 of Article 5 to Article 7, Clause 2 of Article 9, Clause 3 of Article 10, Clause 2 of Article 11, Clause 2 of Article 12, and Clause 3 of Article 14.

2. The application has one of the errors mentioned in Clause 2 of Article 13.

Article 17. Types of errors which make an application invalid

An application which has one of the errors mentioned in Clause 2.a) of Article 5, Clause 2 of Article 8, Clause 4 and 5 of Article 10 shall be considered invalid.

Article 18. Notice of intended refusal to accept the application as valid

1. The conclusion that the application has not been considered as valid stated in the "Notice of intended refusal to accept the application as valid " is carried out in the IPAS system.

2. If containing errors specified in Clause 1 of Article 16, an application has not been yet accepted as valid. The applicant has been informed of the errors and is given a period of 1 month from the date of notification to correct this omission.

The applicant is also warned that the application will be rejected to accept as valid if upon the expiry of the prescribed time limit, the error(s) have not been corrected or were corrected unsatisfactorily.

3. If containing errors specified in Clause 2 of Article 16, an application has not been yet accepted as valid. The applicant is notified of those errors and is given 01 month counting from the date of notification to correct the errors. In particular, if it lacks a copy of the first application, the time limit for the applicant to remedy this mistake is 03 months counting from the date of application (this time limit is un-extendable).

The applicant is also warned that the application may be accepted as valid but the right of priority will not be acknowledged if upon the expiry of the prescribed time limit the errors have not been corrected or were corrected unsatisfactorily.

4. If containing errors specified in Article 17, an application cannot be accepted as valid. The applicant is informed of the errors in the application and is given 01 month counting from the date of notification to comment on that conclusion.

The applicant is also warned that the application will be officially refused to accept as valid if upon expiry of the prescribed time limit, the applicant does not have any objections to the NOIP's conclusion or has an objection but the objection is unfounded.

Article 19. Extension of time limit for submission of response documents

1. The time limit for which the applicant must submit a document responding to the conclusion about the application mentioned in points 2 - 4 of Article 18, point 1 of Article 34, or points from 2 to 6 of Article 48 may be extended once as specified at point 9.2 of the Circular. A request for extension of time limit must be submitted at the same time with a receipt of payment of fee for extension of time limit before the specified deadline ends. The request for extension of time limit for document submission will not be accepted unless the prescribed fee is paid, or even if such fee is paid but this request is filed after the deadline as specified in the Notice of the NOIP.

2. The deadline for submission of a response document may be extended once, being equal the span of time for response specified in the previous notice, as provided for in point 9.2 of the Circular.

Article 20. Decision on refusal to accept the application as valid

1. The conclusion that the application is officially considered invalid stated in the "Decision on refusal to accept the application as valid" is carried out in the IPAS system.

2. If an application falls into the case specified in point 2 of Article 18, and on the expiry of the prescribed time limit (including when Article 19 has been applied, if applicable), the applicant did not correct the errors or corrected the errors unsatisfactorily, the "Decision on refusal to accept the application as valid" is prepared on the ground that the application has error(s) mentioned in point 2 of Article 18.

3. If an application falls into the case specified in point 4 of Article 18, and on the expiry of the prescribed time limit (including when Article 19 has been applied, if applicable), the applicant has had no opinion against the NOIP's conclusion or has an objection but this is unfounded, the "Decision on refusal to accept the application as valid" is prepared on the ground that the

application has error(s) mentioned in point 4 of Article 18.

Article 21. Determination of the right of priority

1. The priority right shall be accepted if the condition for enjoying the priority right of the application comply with Clause 1 of Article 13. In this case, the priority date of the application is recorded.

2. In the event that the requirement mentioned in point 3 of Article 18 is fulfilled within the specified time limit, the priority right is accepted and the priority date of the application is acknowledged.

3. In cases where the requirement specified in point 3 of Article 18 is not fulfilled within the prescribed time limit, or is fulfilled but the Vietnamese translation of copy of the first application shows that the application owner is not the applicant of the first application and there is no assignment of priority right/the right to file, except the case the first application is the application filed at the US Patent and Trademark Office (USPTO) and the applicant of the first application is the designer declared in the application, the priority date of the application shall not be recorded.

The applicant is informed of the reason for not accepting the priority right of the application in the "Decision to accept the valid application".

Article 22. Determination of filing date

1. The filing date is the date on which an application is accepted and is indicated on the seal affixed on the Declaration form.

2. For divisional applications, the filing date is the date inscribed in the seal of receipt affixed on the declaration of the original application.

Article 23. Determination of industrial design classification index

1. The classification index of an industrial design is determined on the basis of the proper name of the product embodied as industrial design and/or the essential features of the industrial design stated in the application, in accordance with the principles of the International Classification for Industrial Designs established by the Locarno Agreement (according to the latest applicable version). The national classification index of industrial designs is also determined if the national classification table is officially applied.

2. The index of industrial design classification defined in Point 1 of this Article must be checked and recorded in respective sections in the IPAS System.

Article 24. Decision on accepting valid applications

1. Conclusion on the validity of the application is stated in the "Decision to accept valid application" carried out in the IPAS system. The priority date and filing date of the respective valid applications are determined in accordance with Article 21 and Article 22 above.
2. If not any error(s) as specified in Articles from 15 to 17 are found , the application shall be accepted as valid.
3. If error(s) as specified in Article 15 are found, the application is still accepted as valid and the applicant is notified of such error(s) in order to make necessary correction during the stage of substantive examination. If such error(s) have not been corrected during the stage of substantive examination, the application will be handled in accordance with Article 30 below.
4. If the application falls into the category mentioned in point 2 of Article 18 and within the prescribed time limit the applicant corrects the error(s) satisfactorily, the application will be accepted as valid.
5. If the application falls into the case mentioned in point 4 of Article 18 and within the prescribed time limit the applicant has submitted grounded opinions against the NOIP's conclusion, the application will be accepted as valid.
6. If the application falls into the cases specified in point 1 to 2 of Article 21, the application is accepted as valid and the priority date is recorded.
7. If the application falls into point 3 of Article 21, the application is accepted as valid and is recorded without a priority date. The applicant is informed of the ground of why the right of priority is not accepted.

Article 25. Time limit for formality examination of applications

1. As prescribed in point 13.8 of the Circular, the time limit for formality examination is 01 month counting from the filing date.
2. If the applicant corrects or supplements documents of the application on his/her own initiative within 01 month from the filing date, or if the applicant responds to the NOIP's notice within the prescribed time limit, the time limit for formality examination shall be extended for 01 month counting from the date upon which the additional documents, corrections and replies are received by the NOIP.

3. At least for 03 working days before the expiry of the time limit specified in point 1 or point 2 of this Article, one of the followings: the Notice of intended refusal to accept the application as valid, the Decision on accepting valid application and the Decision on refusal to accept the application as valid must be completed by the examiner and submitted to Head of Division [of NOIP] for approval and signing before dispatching it to the applicant.

Article 26. Principles for preparation of notices in the stage of formality examination

1. All errors as specified in Articles from 5 to 17 if found in the application must be fully indicated in every notice to make the applicant aware of the status of his/her application at the time the notice is given, enabling him/her to remedy such errors just on the first reply.

2. The consequences arisen from correction of the errors referred to in 1. of this Article shall also be notified to the applicant so that he/she may remedy those consequences just on the first reply.

Article 27. Handling of an applications when the formality examination ends

1. In case of a valid application, the examiner checks and, if necessary, corrects the information on the application in the IPAS System to make it consistent with the application document. The application is transferred to the substantive examination stage.

2. Information related to valid applications which will be published in Volume A of the Industrial Property Official Gazette as specified at point 14.3 of the Circular must be prepared by the examiner in the IPAS System. The ordinal numbers of variants and the ordinal numbers of industrial design photos/drawings should be fully and accurately recorded in the IPAS System in order to facilitate the publication. In case there is only one variant, the ordinal number is recorded as 1. The order of photos/drawings of the industrial design starts from 1 onwards. The photos/drawings which are considered unnecessary or have been replaced by other ones may be removed from NOIP's industrial designs data base.

3. Applications which are officially concluded as invalid are transferred to the Archives division of the NOIP.

Chapter III SUBSTANTIVE EXAMINATION

Article 28. Purpose and contents of substantive examination

1. The purpose of substantive examination of an application is to conclude whether the industrial design in the application satisfies the protection conditions prescribed in Article 64 and Article 90 of the Law on Intellectual Property. In order to draw such conclusions, firstly it is necessary to conclude whether the industrial design in the application belongs to one of the subject matters excluded from the State's protection as industrial design prescribed in Article 64 of the Law on Intellectual Property, or whether there is a violation of the State policy on intellectual property mentioned in Clause 1, Article 8 of the Law on Intellectual Property, and if the industrial design in the application does not fall in one of the subject matters excluded from protection, then come to a conclusion that whether the industrial design in the application satisfies the protection conditions prescribed in Article 64 and Article 90 of the Law on Intellectual Property.

2. The substantive examination covers the followings:

- a) Examination of the contents of documents describing essential features of the industrial design in the application;
- b) Assessment of the essential features of the industrial design in the application;
- c) Determination of whether the industrial design in the application belongs to one of the subject matters excluded from protection;
- d) Assessment of capability of industrial application of the industrial design in the application;
- e) Information search of industrial designs;
- f) Assessment of the industrial designs in the application on the basis of documents found;
- g) Conclusion on the novelty of the industrial designs in the application;
- h) Assessment of creativeness of the industrial designs in the application;
- i) Inspection of observance of the first-to-file rule of the industrial designs in the application;
- k) Assessment of the unity of the application;
- l) Making conclusions about the patentability of the industrial designs in the application.

Article 29. Applications be subjected to substantive examination

Pursuant to provisions of Clause 1.b of Article 114 of the Intellectual Property Law, all applications for registration of industrial designs which have been duly accepted, if no request for withdrawal is made, are subject to substantive

examination.

A request to delay the substantive examination of an application shall not be accepted.

Article 30. Examination of the contents of documents describing essential features of the industrial design in the application.

1. The contents of the documents describing the essential features of industrial designs in an application must meet the provisions specified at points 33.5 and 33.6 of the Circular;

2. If the requirement referred to in Clause 1 of this Article does not allow to clearly to identify the essential features of the industrial design in the application to the extent that it may affect the substantive examination of the application; or the error(s) stated in the "Decision on accepting valid application" specified at point 3 of Article 24 have not been remedied, then the error(s) or the contents which need explanations must be pointed out so that the applicant could take actions accordingly. The handling of application should comply with Article 34 below;

3. If the requirement mentioned in Clause 1 of this Article is not met or the error(s) stated in the "Decision on accepting valid application" specified at point 3 of Article 24 have not been remedied but it does not affect the determination of the essential features of the industrial design in the application and the substantive examination of the application, then the substantive examination of the application will continue, and the error(s) should be noted in order to ask the applicant to remedy when implementing points from 2 to 6 of Article 48 below.

Article 31. Assessment of the essential features of the industrial design in the application

The assessment of the essential features of the industrial design in the application includes the followings:

1. Re-check on the name of the industrial design and the field in which the industrial design is used in order to determine the accurate classification index for the industrial designs in the applications.

2. Determination of the essential features of the industrial design in the application.

The essential features of the industrial design in the application is determined through a set of basic design features fully reflected in the set of photos/drawings and described in the description section of the Description. The

basic design features of an industrial design are those that are easily noticeable/memorable, necessary, and sufficient to distinguish the industrial design in the application from other industrial designs as a whole. Elements of basic design features are determined according to the principles prescribed at point 33.7 of the Circular.

It should be noted that only certain factors such as shapes, lines, colors, position correlation or size correlation and some other factors mentioned in point 33.7. a) of the Circular and at the same time they are not the factors mentioned in point 33.7.b) of the Circular can be considered as basic design features.

The determination of the essential features of the industrial design in the application is supported by the industrial design Description. It needs to check to ensure that the essential features of the industrial design in the application are consistent in both the set of photos/drawings and the industrial design Description.

Article 32. Determining of whether the design in the application belongs to one of the subject matters excluded from protection

1. The design in the application shall be considered not satisfying the conditions for the grant of industrial design patent if it falls into the case specified in Clause 1, Article 64 of the Law on Intellectual Property.

The subject stated in the application shall be considered to have the appearance of an product dictated solely by technical [and functional] characteristics of the product if such appearance is the factor that the same product must also possess to perform the same technical functions of the product.

If can be made in various variants but an product still achieves the same technical characteristics, then the above provision shall not be applied to exclude the variants of the industrial design from protection.

2. The subject stated in the application shall be considered not satisfying the conditions for the grant of industrial design patent if it falls into the case specified in Clause 2, Article 64 of the Law on Intellectual Property.

The appearance of a civil or industrial construction will not be protected as industrial design if the construction can be movable by normal methods and means.

If constructions are made in the form of separate modules or units which are movable and can be used separately or assembled together to create shops, kiosks, mobile homes etc. then the shape of such constructions shall not be regarded as the subject matter excluded from protection according to the above-mentioned regulation and can be protected as an industrial design.

3. The subject stated in the application shall be considered not satisfying the conditions for the grant of industrial design patent if it falls into the case specified in Clause 3, Article 64 of the Intellectual Property Law.

Only features of appearance of a product that are visible or perceptible during normal, intended use can be protected as an industrial design. The internal and obscured parts of the product itself, whether visible when being opened shall not be considered to be visible during use.

Normal use of a product is understood as exploitation of the product in its independent existence when it was registered in a normal way, rather than the exploiting of a finished product in which parts or components that embodies the industrial designs exist. The use of a product is understood as the manufacture, distribution, exchange, trading, and assembly of the product that embodies the industrial design, performed by any end users of the product including manufacturers, distributors, traders, except for maintenance or repair of the product.

4. The subject stated in the application shall be considered satisfying the condition for the grant of industrial design patent if it falls into the case specified in Clause 1, Article 8 of the Law on Intellectual Property. The followings below may be considered as violating this regulation:

- a) Designs of fake money-making machines, letter bombs, or war-provoking products, causing divisions between ethnic groups or religions;
- b) Designs of pornographic products, contrary to social ethical standards etc.;
- c) Designs of products with portraits of leaders of Vietnam and other countries, symbols of nations, state agencies, national and international organizations, unless otherwise having received permission of competent authorities concerned.

5. If the applicant is one of the cases mentioned in Clauses from 1 to 4 of this Article, the handling of application shall comply with Article 34 below.

6. Subjects for registration shall be considered satisfying the conditions for the grant of industrial design patent if they refer to the appearance of the products as specified at Point 35.3 of the Circular and do not fall into the cases mentioned in Clauses from 1 to 4 of this Article.

Article 33. Request to correct errors, explain contents of an application

1. If the application still contains formality errors or has the contents which need explanations as found in point 2 of Article 30, and/or the name of the industrial design stated in the application does not meet the requirements specified at point 33.5.a) of the Circular as defined in point 1 of Article 31, then the error(s) or contents need to be explained in question should be pointed out in the "Notice of errors in the application" or "Notice of explanation for

contents of the application". The application will be handled in accordance with Article 34 below.

2. If the results obtained from point 2 of Article 31 do not allow to identify accurately the subject to be claimed, the substantive examination of the application shall be terminated ahead of time. The application will be handled in accordance with Article 34 below.

3. If there is reason(s) to ascertain that the object does not meet one or some of the conditions for protection, hence there is no need to evaluate other conditions to come to conclusion that the object does not meet the protection conditions, the substantive examination of the application shall be terminated ahead of time. The application will be processed in accordance with Article 34 below.

Article 34. Termination of substantive examination of an application

1. If the application falls into the cases identified in point 1 - 3 of Article 33, the errors or the contents that need to be explained are pointed out in the "Notice of explanation for contents of the application" or "Notice of errors in the application" carried out in the IPAS system.

The time limit of 02 months from the date of signing the Notice is fixed for the applicant to remedy the errors, to explain the subjects stated in the application or to have an objection to the request for explanation of the application's contents. The applicant is also warned that the substantive examination of the application will be terminated ahead of time and the application will be denied to grant of industrial design patent if within the prescribed time limit the applicant fails to remedy the errors, to make no satisfactory explanation or objection to the notice, or has opinions but the opinions are unfounded.

2. If the application falls into the case specified in points 1 - 4 of Article 32, the substantive examination of the application is terminated. The reason for this is pointed out in the "Notice of explanation for contents of the application" or "Notice of errors in the application" carried out in the IPAS system.

The time limit of 2 months from the date of signing the Notice is fixed for the applicant to explain the subject stated in the application or to oppose the Notice of explanation for contents of the application. The applicant is also warned that the substantive examination of the application will be terminated ahead of time and the application will be denied to grant of industrial design patent if within the prescribed time limit the applicant has no satisfactory

explanation or no objection to the notice, or has an objection but the objection is unfounded.

3. If the applicant has a request to terminate the substantive examination or has the declaration of withdrawal or abandonment of his/her application, the substantive examination of the application shall be terminated ahead of time or regarded withdrawn. The application is recorded withdrawn in the IPAS System to end the substantive examination but the "Notice of termination of substantive examination ahead of time" or "Notice of withdrawal of the application" need not to be sent to the Applicant.

Article 35. Restoration/Refusal to restore substantive examination of an application

1. If the application falls into the case specified in points 1-2 of Article 34, and within the prescribed time limit, the applicant has a satisfactory explanation or has a reasonable objection, the substantive examination will be restored. The application will be further handled in accordance with relevant terms.

2. If the application falls into the cases specified in points 1-2 of Article 34, and within the prescribed time the applicant fails to have satisfactory explanation or objection, or has an objection to the notice but the objection is unfounded, the substantive examination of the application is terminated and the application is being refused to grant the protection title. The applications will be handled in accordance with Article 53 below.

Article 36. Assessment of capability of industrial application

1. The industrial design stated in an application shall be considered as not having capability of industrial application as provided for in Article 67 of the Law on Intellectual Property and point 35.6 of the Circular if falls into one of the followings:

- a) Inability to make a series of products that embodies the industrial design in the application by industry or handcraft;
- b) The subject stated in the application is the shape of a product that consists of substances in form of gas, powder, or liquid etc. that do not have a definite shape or contours;
- c) A product whose shape identical to the design in the application can only be created with special skills or it is impossible to repeatedly produce products that have the shape identical to the design in the application;
- d) Other shapes with justifiable reasons.

The applications in the above said cases do not meet the protection conditions.

The handling of those applications should comply with point 2 of Article 48 below.

2. The industrial design in an application shall be considered capable of industrial application if satisfying the requirements specified at Article 67 of the Law on Intellectual Property and does not fall into one of the cases specified in point 35.6 of the Circular.

Article 37. Information search of industrial designs

1. The purpose of information search is to find out industrial designs which are identical with or similar to or related to the industrial design stated in the application for evaluating it in terms of protection conditions.

2. The mandatory minimum information source required to be searched during the substantive examination of an application is specified at point 35.4 of the Circular. Specifically, the examiner must conduct information search at least in the followings:

- a) Industrial design applications already received by the NOIP and having dates of publications earlier than the filing date or date of priority of the examined application (if it enjoys priority right);
- b) Industrial design applications and industrial design protection patents published by other organizations or countries within 25 years before the filing date or date of priority of the examined application (if it enjoys priority right), which are archived in the NOIP's database;
- c) Other information related to industrial designs collected and archived by the NOIP;
- d) Industrial design applications received by the NOIP and having filing dates or dates of priority (if they enjoy priority right) earlier than the filing date or date of priority of the examined application (used to inspect the observance of the first-to-file rule);
- e) When necessary and possible, the search may be expanded beyond the mandatory minimum information source above. Electronic databases of industrial designs accessible on the websites of Organizations or the World Intellectual Property Organizations or websites of other entities may be used to expand the search scope.

Article 38. Methods of conducting information search

1. The information search must comply with the following provisions:

- a) To search according to the classification index of the industrial design stated in the application and to other classification indexes of the products which identical with, similar and related to the products that embody the

industrial designs stated in the application (cross-searching);

- b) To search according to the relevant instructions on the products on the application's website and on the Google Image, Yahoo Image, or similar tools;
- c) To expand the scope of search for products of similar industrial designs on the websites of Organizations or the World Intellectual Property Organizations or websites of other entities when appropriate.

2. The information search ends when:

- a) Having found the industrial design(s) which are identical with the industrial design stated in the application, that is sufficient to assess the novelty, creativity and the first-to-file rule in accordance with the principles specified at points 35.7, 35.8 and 35.9 of the Circular and Article 39 below; or
- b) Failed to find or found industrial design (s) which are similar to the industrial design stated in the application, that is sufficient to assess the novelty, creativity, and the first-to-file rule in accordance with the principles specified at the points. 35.7, 35.8 and 35.9 of the Circular and Article 39 below after having searched all sources of information mentioned in point 2, Article 37.

Article 39. Assessment of industrial designs stated in the application with similar industrial designs found

The assessment of the industrial design stated in an application with similar industrial designs found aims to determine whether the industrial design stated in the application is identical with, not significantly different or significantly different from the industrial designs found in order to draw conclusions about the novelty, creativity and the first-to-file rule of the industrial design stated in the application.

1. Identical industrial designs

Identical industrial designs are determined on the principles prescribed in point 35.1. a) of the Circular. Specifically, two industrial designs are considered identical when they are used for the same type of product and have the same assembly of essential and non-essential design features;

2. Industrial designs are not significantly different

Industrial designs which are not significantly different are determined according to the principles prescribed in point 2, Article 65 of the Law on Intellectual Property. Specifically, two industrial designs are considered not significantly different from each other if being used for the same type of product they have the same assembly of essential design features and only differ in non-essential design features.

In contrast, two industrial designs are considered to be significantly different

from each other when there exist at least one essential design feature that can distinguish them from each other.

3. Most similar industrial design

The most similar industrial design is determined on the principles prescribed at point 35.1. c) of the Circular. Specifically, two industrial designs are considered most similar to each other if being used for the same type of product the number of their similar essential design features is greater than those of other similar industrial designs. Between two most similar industrial designs, there exist at least one essential design feature that is distinct from each other.

4. Similar industrial designs

Similar industrial designs are determined on the principles prescribed in point 35.1 .b) of the Circular. Specifically, two industrial designs are considered similar if being used for the same type of product, they have several identical essential design features. Between two most similar industrial designs there are several essential design features that differ from each other.

5. Cited industrial designs

A cited industrial design is determined on the principles prescribed in point 35.5 of the Circular. Specifically, cited industrial designs include those industrial designs which are identical with, not significantly different from, most similar to and similar to the industrial designs stated in the application, that are necessary to and sufficient for assessing the novelty, the creativity and the first-file rule of the industrial design stated in the application.

Article 40. Search reports

1. The search report shall include all relevant information found in accordance with the provisions of point 35.5 of the Circular.

Information disclosing industrial designs by way of publication must be disclosed publicly, including images related to the industrial designs, sources of the information and the date of publication of the information sources containing such industrial designs.

The information revealing an industrial design by way of use must include the evidence proving that the industrial design was publicly disclosed and the date on which the industrial design product was put into circulation on the market, except for information about famous products and works in Vietnam or around the world.

The information disclosing an industrial design on Internet is considered to be publicly disclosed if the website (electronic information site) includes

sufficient evidence proving that the said industrial design has been disclosed on Internet, the URL address (the last address locating the web page containing the industrial design), the date on which the web page containing the industrial design appeared on the Internet. The "Way back Machine" web hosting tool (<http://www.archive.org>) can be used to determine the public disclosure date of a web page containing an industrial design.

2. All information stated in the search reports for the industrial designs stated in the application must be fully entered in the "Citation documents" section of the application in the IPAS System. Cited documents will be considered as not available for the application to be handled if the search information are not fully entered in the IPAS System.

3. Industrial design examiners shall search all information related to the industrial design sought to be registered before drawing conclusions on its novelty, creativity and the observance of the first-to-file rule.

Article 41. Handling of opinions of third persons

1. As from the date an industrial design application is published until prior to the date of issuance of the decision to grant the protection title, opinions of third persons filed under Article 112 of the Law on Intellectual Property regarding opposition to the grant of protection titles for industrial designs stated in the applications shall be considered during the substantive examination.

2. If deeming that the third party's opinion is grounded, that opinion shall be handled according to the provisions of point 6.2 of the Circular. Specifically, the applicant is notified in written of the opposition to the grant of a protection title and is assigned a maximum time limit of 01 month from the date of the Notice to respond in writing. A copy of this notice is sent to the third person.

3. If deeming that the third party's opinion is unfounded, that opinion shall be handled according to the provisions of point 6.3 of the Circular. Specifically, the third party's opinion does not need to be notified to the applicant, but the reason for refusal to consider such opinion must be notified to the third person.

4. In case of necessity, the applicant's feedback may continue to be communicated to the third person. The third person is assigned a maximum time limit of 01 month from the date of the Notice to respond in writing to that

feedback.

5. In case a third party's opinion relates to the right to registration, if considering that it is unable to determine whether the third party's opinion is grounded, the third person is notified about the fact in order to file a case at the Court for settlement according to the provisions of point 6.4 of the Circular.

6. If determining that a third person's opinion is grounded, the information contained in such opinion will be used as a source of cited information, recorded in the search report, and used to assess the novelty and creativity of the industrial design in the application. The examiner shall notify in writing the third person that such opinion was used to assess the novelty and creativity of the industrial design in the application. This notice is sent to the third person along with a copy of the notice of substantive examination results in which the third party's opinion has been used.

7. The exchange of information with the third person and the applicant may be repeated. In case of necessity, the applicant and the third person may be invited to the NOIP for a direct dialogue before the Industrial Design Department issues a final conclusion.

Article 42. Principles for evaluation of differences between industrial designs

1. The industrial design stated in the application is evaluated as compared with each cited industrial design on the basis of assembly of their essential features in order to find common and distinctive design features. Certain factors of shape, lines, colors, positional or dimensional correlation, along with other factors, may be considered as essential features.

2. The industrial design is assessed as a whole

- a) A set of all design features that constitute the industrial design shall be considered and evaluated;
- b) No specific assessment, conclusion shall be conducted on a part or component of an industrial design;
- c) A finished product and the components of a finished product are considered as products of different types, whereby the industrial design applied to the finished product and to the parts of the finished product is considered significantly different to each together.

3. The industrial design is assessed through ways of representation, not ideas of representation

a) The way of representation of an industrial design is determined by a set of actual design features that constitute the industrial design.

4. Industrial design is assessed through its appearance

a) The internal structure of a product made of transparent materials may be considered in the evaluation;

b) The internal structural features which do not directly create an aesthetic impression are often of little importance in the evaluation.

5. The part of a product that usually is the focus of observation will be judged at a more important level

a) For those types of products, e.g., refrigerators, television sets etc., where usually only a certain part of the product is a main focus of viewers, e.g., front surface, then such part is assessed at a more important level than the rest parts of the product (e.g., back, bottom surfaces etc.).

6. Size/dimensions of industrial designs

a) The dimensions of an product that embodies the industrial design, if changed in ratio of similitude (or scale factor), are not regarded as essential shaping characteristics;

b) The part of a product, of which the size is changed to ensure technical performance or conforms to the technical requirements (such as jacks, wheels, etc.), will be valued at lesser important level;

c) For those types of bar products of unlimited length, with a constant cross-section or a repeatable change along the length of the bar product (e.g., shaped metal bar, etc.) a change of the length of the product is not considered as essential design feature;

d) For those types of two-dimensional products with an unlimited surface area, decorated with repetitive floral patterns (e.g., fabric, wallpaper, paper tape, etc.), a change of the number of patterned clusters is not considered as essential shaping feature;

e) In the case of sheet products (e.g., fabric, wallpaper, etc.), a significant change in size and spacing of decorative lines on it may be considered as essential shaping feature.

7. Change of materials used for manufacture of product;

a) Materials used to manufacture a product are not considered as essential shaping features.

8. Change of colors of product

a) For certain types of specific products where surface decoration is important

(e.g., product labels, expandable packaging or boxes, bowls, plates, etc.), colors are shown in a certain decoration layout that give a distinctive aesthetic impression can be considered as essential shaping feature;

b) The color itself is considered as known, so is not considered as essential shaping feature.

9. Symmetric industrial design

a) The difference of an industrial design from a cited industrial design is not considered as essential design feature if it is created by taking symmetry from the cited industrial design.

Article 43. Conclusion on the novelty of the industrial design in an application

1. The mandatory minimum information source used to evaluate the "novelty" of the industrial design stated in an application includes cited documents specified at point 35.4.b (i-iii) of the Circular, including the information, where appropriate, contained in the third person's opposition to the protection. The source of information used to evaluate the "novelty" includes only the information that was publicly disclosed before the filing date (or priority date) of the industrial design in the application.

2. Based on the information contained in the search report, which is made in accordance with the provisions of point 35.5 of the Circular and Article 40, the evaluation to draw conclusions about the novelty of the industrial design stated in the application shall be conducted according to point 35.7. (a - b) of the Circular.

3. The industrial design in an application is considered not meeting the "novelty" criteria if at least one cited industrial design included in the search report is being identical industrial design as defined in point 1 Article 39 or is being not significantly different from the industrial design in the application as defined in Clause 2, Article 39, and at the same time the cited industrial design is not the industrial design in the application published/disclosed under the circumstances specified in point 3 and 4, Article 65 of the Law on Intellectual Property. In this case, the application fails to meet the protection conditions. The handling of application should comply with point 2, Article 48 below.

It should be noted that only the information on an subject contained in each cited document can be used to conclude on the novelty of the industrial design in the application under this Article 43 (i.e., assessed by a one-to-one relationship).

4. The industrial design in the application shall be considered novel if it does not fall into the case stipulated in point 3 of this Article. The assembly of new distinct essential design features together with the remaining design features will determine the scope of protection of the industrial design in the application, as may be indicated in the scope (claims) of protection of the Description and is represented on the photos/drawings of the application.

Article 44. Basis for assessment of creativity

1. Person with average knowledge in the art

Person with average knowledge in the art is understood to have ordinary knowledge in the field in which the industrial design is applied, that means he/she automatically knows information about the industrial design that has been disclosed in the corresponding field as specified at point 23.6.a of the Circular.

Any information about an industrial design relating to the type of product to which the industrial design stated in the application is applied, regardless of whether it is in written form or used, in which language and in which country, are considered to be within the knowledge of the person with average knowledge in the art, provided that such information is publicly disclosed prior to the filing date (or priority date) of the industrial design in the application.

2. The mandatory minimum information source used to assess the "creativity" of the industrial design in an application includes the cited documents specified at point 35.4.b (i - iii) of the Circular, including the information, where appropriate, contained in the third person's opposition to the protection. This source of information only includes the information that was publicly disclosed prior to the filing date (or priority date) of the industrial design in the application.

3. Industrial design examiners

Industrial design examiner shall assess the creativity of the industrial design in the application according to the principles specified at point 35.8 of the Circular based on information within the knowledge scope of the person with average knowledge in the art as prescribed in point 1- 2 of this Article.

Article 45. Assessment of creativity of the industrial design in an application

1. Industrial designs which are not creative

The industrial design in an application shall be considered not creative if it falls into the case mentioned in paragraph b, point 35.8 of the Circular, namely:

a) An industrial design is a simple combination of known design features

(namely, publicly disclosed design features are put together or assembled in such a simple way as replacement, interchange of positions, increase or decrease in quantity etc.);

This situation applies when the essential design features of the cited industrial design coincide with or are not significantly different from the essential design features of the industrial design in the application, at the same time the positional correlation of the essential shaping features, the way to assemble them together or the way to change the position between them are already known in that field.

b) An industrial design is a reproduction/imitation of part or the whole inherent natural shape of a tree, fruit, or animal etc., shapes of geometric figures (round, ellipse, triangle, square, rectangular, regular polygons and prisms, cross-sections of which are foregoing figures) which are widely known. This situation applies if the industrial design in the application is not sufficiently stylized, causing the industrial design to be regarded as having the appearance of natural objects in normal status or is a form of simple geometry.

c) An industrial design is a simple reproduction of the shape of a product or well-known works, officially known in Vietnam or worldwide;

d) An industrial design is imitation of an industrial design in another field, if such imitation is widely known in reality (for example, motorbike-, car-imitating toys, etc.).

If falling into the above cases, the application does not meet the protection conditions. The handling of application should comply with Clause 2, Article 48 below.

2. Creativity of industrial designs

The industrial design in an application shall be considered creative if not falling into the case mentioned in point 35.8.b. of the Circular and point 1 of this Article.

Article 46. Inspection of observance of the first-to-file rule of the industrial design in an application

1. The mandatory minimum information source used to check the first-to-file rule of the industrial design in an application includes the cited documents specified at point 35.4.b. (iv) of the Circular.

This source of information includes only those cited industrial designs which are identical with or not significantly different from the industrial designs stated in the application and at the same time belongs to the industrial design applications filed with the NOIP before the filing date (or the priority date) of the industrial design stated in the application, but being published after

the filing date (or priority date) of the industrial design stated in the application, and meeting the conditions for the grant of an industrial design patent.

2. If no cited industrial design is found in the information source mentioned in point 1 of this Article, the industrial design in the application shall be deemed to satisfy the first-to-file rule.

The industrial design sought to be registered that is a component of a finished product is also being considered to satisfy the first-to-file rule if no identical or not substantially different industrial design of a separate product or of a component of a finished product as stated in the cited industrial design is found.

3. If a cited industrial design is found in the information source mentioned in point 1 of this Article, the industrial design in the application is deemed not satisfying the first-to-file rule. In this case, the application does not meet the protection conditions. The handling of application should comply with point 3 of Article 48 below.

The industrial design sought to be registered that is a component of a finished product is also being considered not satisfying the first-to-file rule prescribed in point 35.9. c of the Circular if an identical or not substantially different industrial design of a separate product or of a component of a finished product as stated in the cited industrial design is found.

4. In case a cited industrial design is found in the information source mentioned in point 1 of this Article, but having the same filing date (or priority date) as the filing date of the industrial design in the application, submitted to NOIP by a number of different owners (for the same industrial design or not substantially different industrial designs), the industrial design in the application does not satisfy the first-to-file rule. In this case, the application does not meet the protection conditions. The handling of application should comply with point 4 of Article 48 below.

5. In case a cited industrial design is found in the information source mentioned in point 1 of this Article but having the filing date (or priority date) the same as the filing date of the industrial design in the application, submitted to NOIP by the same owner (for the same industrial design or not substantially different industrial designs) the industrial design in the application does not satisfy the first-to-file rule. In this case, the application does not meet the protection conditions. The handling of application should comply with point 5 of Article 48 below.

Article 47. Assessment of the unity of an application

1. The unity of an application with several variants or an application submitted for a set of products is considered unsatisfactory if the assessment results of essential features of the industrial design in the application as specified at point 2, Article 31 allows to determine that:

a) the industrial designs according to the variants stated in the application do not have the same assembly of essential features. In this case, the industrial designs according to those variants are considered to be significantly different from each other; or

b) the industrial designs of the products in a set of products do not include a unique creative idea, that means the industrial designs of these products do not contain at least one essential design feature that is determined to be novel and applied together to the products included in that set of products.

Falling into the above cases, the application does not meet the protection conditions. The handling of application should comply with point 6, Article 48 below.

2. The unity of an application is considered satisfactory if the industrial design(s) in the application do not fall into the cases mentioned in point 1 of this Article.

Article 48. Conclusion of possibility of not satisfying protection conditions of industrial designs in an application

1. A conclusion that the industrial design(s) in an application having no possibility of protection pursuant to the provisions specified at point 15.7 of the Circular is pointed out in the "Notice of results of the substantive examination" performed in the IPAS system.

2. If the application falls into a case specified in point 1 of Article 36, point 3 of Article 43 and point 1 of Article 45, the subject stated in the application does not meet the protection conditions. The respective reasons that make the application unable to meet the requirements in terms of "capability of industrial application", "novelty", "creativity", and the errors that found as specified at point 3 of Article 30 are pointed out in the "Notice of results of the substantive examination".

A time limit of 02 months from the date of signing the Notice is fixed for the applicant to give his/her opinions. The applicant is also warned that the application will be denied to grant of industrial design patent if within the prescribed time limit, the applicant has no opinions or has an objection but those are unfounded, or the error(s) that found as identified in point 3 of

Article 30 have not been remedied or remedied unsatisfactorily.

3. If the application falls into the case specified in point 3 of Article 46, the subject stated in the application does not meet the protection conditions. The reason why the application fails to meet the first-to-file rule is pointed out in the "Notice of results of the substantive examination".

Errors that found as identified in point 3 of Article 30 are also pointed out in the "Notice of results of the substantive examination".

A time limit of 02 months from the date of signing the Notice is fixed for the applicant to give his/her opinions. The applicant is also warned that the application will be denied granting of industrial design patent if within the prescribed time limit, the applicant has no opinions or has an objection but those are unfounded.

4. If the application falls into the case determined in point 4 of Article 46, the subject stated in the application does not meet the protection conditions. The reasons why the application does not meet the first-to-file rule, and the requirement that the application owner should agree with other application owner(s) for to be named in a single application is pointed out in the "Notice of results of the substantive examination".

Errors that found as identified in point 3, Article 30 are also pointed out in the "Notice of results of the substantive examination".

A time limit of 02 months from the date of signing the Notice is fixed for the applicant to give his/her opinions. The applicant is also warned that the application will be denied granting of industrial design patent if within the prescribed time limit, the applicant has no opinions of the request to fulfil the said requirements or has an objection but those are unfounded.

5. If the application falls into the case determined in point 5 of Article 46, the subject stated in the application does not meet the protection conditions. The reason of not satisfying the first-to-file rule, and the requirement that the application owner must select one of the filed applications or to combine the industrial designs in various applications into a single application in a form of variants and a statement of withdrawal of the remaining applications, including appropriate amendments to the application, is pointed out in the "Notice of substantive examination results".

Errors that found as identified in point 3, Article 30 are also pointed out in the "Notice of results of the substantive examination".

A time limit of 02 months from the date of signing the Notice is fixed for the Applicant to give his/her opinions. The applicant is also warned that the application will be denied granting of industrial design patent if within the

prescribed time limit, the applicant has no opinions of the request to fulfil the said requirements or has an objection but those are unfounded.

6. If the application falls into the case specified at point 1 of Article 47, the subject stated in the application fails to meet the protection conditions. The reasons why the application not satisfying the requirements for the unity of an application, the requirement that the applicant must remove non-unity subjects from the application or separate those subjects to file under new application(s), including appropriate amendments to the application, is pointed out in the "Notice of substantive examination results".

In addition, if one or several of the subjects in the application do not meet other protection criteria, the respective conclusions on that subject(s) must be pointed out in the "Notice of results of the substantive examination" enabling the applicant to be aware of these.

Errors that found as identified in point 3, Article 30 are also pointed out in the "Notice of results of the substantive examination".

A time limit of 02 months from the date of signing the Notice is fixed for the applicant to remedy the errors regarding the unity of an application, to remove non-unity subjects from the application or separate those subjects to file under new application(s), or to file an opposition to the above requirements of the NOIP. The applicant is also warned that the application will be denied granting of industrial design patent if within the prescribed time limit the applicant fails to remedy the errors in the application, has no objection or has an objection but the objection is unfounded.

Article 49. Examination of supplemented and modified documents during substantive examination stage

1. In case the applicant at initiative of his/her own or upon the request of the NOIP proceeds to supplement or modify the application documents according to the provisions specified at point 17.1.b(ii) of the Circular, the examiner shall check whether the supplemented or modified documents meet the requirements as specified at point 17.1.c of the Circular, and whether it is enclosed with the payment receipt of fee for amendment and supplementation of the application as prescribed in point 17.1.h of the Circular.

2. If the requirements specified at point 17.1.c and point 17.1.h are met, the supplemented documents and modified contents may be accepted. The application shall be further handled with such supplemented documents and modified contents according to relevant articles

3. If there is a lack of the payment receipt of fee for amendment,

supplementation of the application as prescribed in point 17.1.h of the Circular, the supplemented documents and modified contents are not accepted. The examiner informs the applicant in writing of the reason for not accepting such supplemented, modified documents and requests the applicant to pay the respective fee in order to have the supplemented or modified documents accepted.

4. If the requirements specified at point 17.1.c of the Circular are not met, the supplemented documents or modified contents are not accepted. The examiner informs the applicant in writing of the reason for not accepting such supplemented or modified documents. The application should be handled on the basis of the contents of the documents previously accepted according to relevant articles.

Article 50. Handling of an application after conclusion that the application failing to comply with requirements for grant of industrial design patent (after the "Notice of explanation for contents of the application" or the "Notice of errors in the application")

1. Within the prescribed time limit, if the applicant has an opinion that he/she will make necessary remedy, explanation or has a justified objection to the reasons stated in point 1-2 of Article 34, the application will be further handled. The examiner should implement Article 36.

2. In case where the applicant has a justified explanation or objection, if still there is a ground for argument that differs from those in the first notice, the examiner if having another ground for argument may reserve his/her opinion by issuing the 2nd Notice. The examiner should return to implement point 1 or 2 of Article 34.

3. Upon expiration of the prescribed time limit, if the application falls into the case specified in point 2 of Article 35 (i.e., the applicant has no objection or has an objection but it is unfounded), the application will be rejected for grant of protection title. The handling of application should comply with Article 53.

Article 51. Handling of application after conclusion that an application failing to meet the protection conditions (after issuing the Notice of results of the substantive examination)

1. Within the prescribed time limit, if the applicant has a justified objection to the reasons/requests stated in point 2-6 of Article 48, the application will be further reviewed in accordance with relevant terms and carried out according to Article 52.

2. Within the prescribed time limit, if the applicant has a satisfactory response and satisfactorily implements the requirements specified at points 4-6 of Article 48, the application will be further reviewed in accordance with relevant articles and carried out according to Article 52.

3. In case where the applicant has a justified objection, if still there is a ground for argument which differs from those in the first Notice, the examiner if having another ground for argument may reserve his/her opinion by issuing the 2nd Notice. The examiner should return to implement the respective points in Article 48.

4. Upon expiration of the prescribed time limit, if the applicant has no opinion or has unfounded objection to the reasons/requests stated in points 2-6 of Article 48, the application will be denied for grant of protection title. The handling of application should comply with Article 53.

Article 52. Notice of intended grant of industrial design patent

1. Conclusions about grant of industrial design patent are carried out in the IPAS system.

2. If an application is not in the cases identified in points from 2 to 6 of Article 48, or in the event of falling into the cases identified in points 2 to 6 of Article 48 but afterward the application is handled in accordance with points 1-2 of Article 51, the subject stated in the application is considered to satisfy the protection conditions. The conclusion that the application satisfies the protection conditions, the fee for granting protection title, the fee for publication of decision on granting protection title and the fee for registration are indicated in the Notice of intended grant of protection title. A time limit of 01 month from the date of Notice is fixed for the applicant to pay the above mentioned fees. The applicant is also warned that the application will be denied granting of protection title if within the prescribed time limit the applicant fails to pay the notified fees.

3. For applications for grant of protection title, the information related to the applications to be published in the Industrial Property Official Gazette - Part B as prescribed at point 19.2 of the Circular must be prepared by the examiners in the IPAS system in the same manner as stated in point 2 of Article 27.

4. The examiner should complete the application dossier in accordance with

Article 55.

Article 53. Decision on refusal to grant a protection title

1. Conclusions about refusal to grant a protection title to the industrial design stated in applications are carried out in the IPAS system.

2. If the application falls into the case specified in point 2 of Article 35, the application will be refused for grant of protection title according to the provisions of point 15.5 of the Circular. The conclusion on rejection of an application is stated in the "Decision on refusal to grant a protection title". The applicant is informed of the right to appeal against this Notice in accordance with the provisions specified at point 22 of the Circular.

3. If the application falls into the cases specified at point 3 of Article 50 or point 4 of Article 51, the application will be refused for grant of protection title according to the provisions specified at point 15.7 of the Circular. The conclusion on rejection of the application is stated in the "Decision on refusal to grant a protection title".

The applicant is informed of the right to appeal against this Notice in accordance with the provisions specified at point 22 of the Circular.

4. The examiner should complete the application dossier in accordance with Article 56.

Article 54. Principles of handling application during substantive examination stage

1. The substantive examination of an application shall comply with the provisions specified at point 15.6 of the Circular. Specifically, the subject stated in the application is being assessed by turns according to every protection condition.

a) If an application deals with several variants, the industrial design of each variant starting from the principal variant (i.e., the first variant stated in the application) must be assessed;

b) If an application deals with a set of products, the industrial design of each product must be searched and assessed by turns independently according to every protection condition, in the same manner as for a particular industrial design of a product;

c) If an industrial design of a product of a set of products does not meet at least one protection condition, the industrial design of such product must be excluded from the set of products. The applicant will also be requested to submit the application documents that match with a new product set.

2. All the errors or reasons specified at Article 15, points 2-3 of Article 30, point 2 of Article 34, points 2-6 of Article 48, if exist, must be fully listed in every notice enabling the applicant aware of the status of the application at the time the notice is issued.

3. Consequences arose from the correction of errors mentioned in point 1 of Article 33 must also be notified to the applicant so that he/she can remedy these consequences at the first reply.

Article 55. Preparation and submission of application dossier for approval for grant of protection title

1. If an application falls into the case specified at point 2 of Article 52, the examiner should prepare and arrange the documents in the application in three separate volumes in the order as specified at point 2 below.

2. Documents of the application dossier for approval for grant of industrial design patent include:

- a) The first volume consists of the Notice of intended grant of protection title (consisting of the Notice of Substantive Examination and Substantive Examination Report), searched documents, Notices made during the examination stage and the applicant's written replies (if any) in chronological order of execution;
- b) The second volume consists of a set of photos/drawings of the industrial design which is finally processed for the application;
- c) The third volume includes the remaining documents in the application.

3. The examiner transfers the application to the Head of [Industrial Design] Department for approval before submitting it to the Leader of NOIP to sign for granting a protection title.

Article 56. Preparation of application dossier for withdrawal or refusal to grant a protection title

1. If the application falls into one of the cases specified at points 2 and 3 of Article 53, the examiner should prepare and arrange the documents in the application in three separate volumes in the order specified at point 2 below.

2. Documents of the application dossier to be submitted for signature include:

- a) The first volume consists of the Notice of the application regarded as withdrawn or the Decision on refusal to grant a protection title (including the Substantive Examination Report), searched documents, Notices made during the examination stage and the applicant's written replies (if any) in chronological

order of execution;

- b) The second volume consists of a set of photos/drawings of the industrial design which is finally processed for the application;
- c) The third volume includes the remaining documents in the application.

3. The examiner transfers the application to the Head of [Industrial Design] Department for approval before submitting it to the Leader of NOIP to sign for granting a protection title.

Article 57. Time limit for substantive examination

1. For an application filed before January 1, 2010, the time limit for substantive examination is 06 months from the date of publication.
For an application filed as from January 1, 2010, the time limit for substantive examination shall not exceed 07 months from the date of publication of the application.

2. If the applicant on initiative of his/her own corrects or supplements documents during the substantive examination stage, or if the applicant performs a response to the NOIP's notice, the time limit for substantive examination is extended for 02 months counting from the date his/her response document(s) is/are submitted to the NOIP (i.e., this span of time is equal the time that NOIP gives to the applicant to respond to a NOIP's notice).

3. 15 (fifteen) days before the expiration of the time limit specified at points 1 and 2 of this Article, one of the followings: Notice of errors in the application, Notice of explanation for contents of the application, Notice of results of the substantive examination, Notice of Intended grant of protection title, Notice of Intended refusal to grant a protection title must be completed in order to be transferred to the Head of [Industrial Design] Department for approval before submitting it to the Leader of NOIP for signature.

Article 58. Processing of applications after substantive examination

Those applications that have been granted protection title, or being regarded as withdrawn, or being refused to grant a protection title are considered having finished the substantive examination stage and are transferred to the relevant units in the NOIP for granting a protection title or for archives.

Article 59. Re-examination of an industrial design application

1. The re-examination of an application complies with the provisions specified at point 16 of the Circular in the following cases:
- a) There is an opposition of the applicant/third person about the grant/refusal

to grant a title of protection filed after the issuance of a notice on intended grant/intended refusal to grant a protection title as specified at point 16.1.a of the Circular;

b) There is a request of the protection title owner for narrowing of the protection coverage of the protection title, the re-examination of the contents of the application shall be conducted in accordance with the provisions specified at point 16.2 of the Circular and relevant articles depending on the reasons stated in the request for narrowing the scope of protection.

2. The examiner responsible for the handling of application dossier shall continue to re-examine the contents of the application in order to draw conclusions in accordance with the request for re-examination.

3. The time limit for re-examination of an application is 04 months from the date of submission of the request for re-examination as prescribed in point 16.1.b of the Circular. 15 (fifteen) days before the expiration of the time limit specified at point 3 of this Article, the conclusion about the request for re-examination of the contents of the application must be completed and transferred to the Head of [Industrial Design] Department for approval before being submitted to the Leader of NOIP for signature.

Chapter IV OTHER REGULATIONS

Article 60. Management, delivery, and receipt of application dossiers

1. Industrial design applications, documents related to the application including supplemented documents during the period of examination of applications must be fully recorded in the Archives of the Industrial Design Department.
2. The transfer of applications between the units in the NOIP, between the Examiners and the Leader of Department must be fully recorded for the purpose of locating applications and avoiding the risk of losing applications. All persons involved in the handling of applications must be responsible for preserving the documents contained in the applications in full and best condition.

Article 61. Responsibilities of industrial design examiners

1. Industrial design examiners shall be responsible for the applications which are assigned to them to handle and shall perform all jobs related to examination and re-examination of industrial design applications, coordinate with relevant units in the NOIP in providing expert opinions on the applications that are complained and implement respective contents stated in the decisions on complaint settlement.
2. The examiner shall be responsible for handling and preserving all documents contained in the application, the supplemented documents as well as those that were handled during the examination stage.
3. The examiner shall keep industrial design applications confidential according to the provisions specified at Article 111 of the Law on Intellectual Property.

Article 62. Responsibilities of the Head of Industrial Design Department

1. The Head of the Industrial Design Department shall have to assign applications to examiners to handle, to validate the industrial design classification indexes and to check the contents of notices to be sent to applicants.
2. The Head of the Industrial Design Department shall have to control, remind, and apply necessary administrative measures to ensure the quality of search and examination of industrial design application as well as to guarantee to keep up with the application handling progress. In case of necessity, in order to ensure the quality and progress of work, the Head of the Industrial Design Department may transfer the applications that are being handled to other examiners to

handle.

3. The Head of the Industrial Design Department shall be responsible for drawing a final conclusion on examination, re-examination of the applications as well as of those which are complained, to be submitted [to the leader of NOIP] for signature.

Article 63. Responsibility for coordination among units in the NOIP

1. All persons and units of the NOIP shall assume responsibility to collaborate in working, performing the assigned tasks, complying with provisions of time limits, ensuring the quality of work and good maintenance of all necessary equipment and technical infrastructure to best serve the handling of applications.

2. The coordination of work among units of the NOIP shall comply with the Working Regulation of the NOIP.

Chapter V IMPLEMENTING PROVISIONS

Article 64. Implementing provisions

The applications of which the examination process have not yet finished shall continue to be handled according to the provisions of this Guidelines.

All comments on and suggestions of amendments to this Guidelines should be forwarded to the Industrial Design Department for summarization and submission to the Director of NOIP for consideration and decision.