LAW ON INTELLECTUAL PROPERTY

(No. 50/2005/QH11)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

This Law provides for intellectual property.

Part One
GENERAL PROVISIONS

Article 1.- Governing scope

This Law provides for copyright, copyright-related rights, industrial property rights, rights to plant varieties and the protection of these rights.

Article 2.- Subjects of application

This Law applies to Vietnamese organizations and individuals; foreign organizations and individuals that satisfy the conditions specified in this Law and treaties to which the Socialist Republic of Vietnam is a contracting party.

Article 3.- Subject matters of intellectual property rights

1. Subject matters of copyright include literary, artistic and scientific works; subject matters of copyright-related rights include performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.

2. Subject matters of industrial property rights include inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications.

3. Subject matters of rights to plant varieties include plant varieties and reproductive materials.

Article 4.- Interpretation of terms

In this Law, the following terms shall be construed as follows:

1. *Intellectual property rights* mean rights of organizations and individuals to intellectual assets, including copyright and copyright-related rights, industrial property rights and rights to plant varieties.

2. *Copyright* means rights of organizations and individuals to works they have created or own.

3. *Copyright-related rights* (hereinafter referred to as related rights) mean rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.

4. *Industrial property rights* mean rights of organizations and individuals to inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications they have created or own, and right to repression of unfair competition.

5. *Rights to plant varieties* mean rights of organizations and individuals to new plant varieties they have selected, created or discovered and developed, or own.

6. *An intellectual property right holder* means an owner of intellectual property rights or an organization or individual that is assigned intellectual property rights by the owner.

7. *A work* means a creation of the mind in the literary, artistic or scientific domain, whatever may be the mode or form of its expression.

8. *A derivative work* means a work which is translated from one language into another, adapted, modified, transformed, compiled, annotated or selected.

9. *A published work, phonogram or video recording* means a work, phonogram or video recording which has been made available to the public with the permission of the copyright holder or related right holder in a reasonable amount of copies.

10. *Reproduction* means the making of one or many copies of a work or a phonogram or video recording by whatever mode or in whatever form, including permanent or provisional backup of the work in electronic form.

11. *Broadcasting* means the transmission of sound or image or both sound and image of a work, a performance, a phonogram, a video recording or a broadcast to the public by wire or wireless means, including satellite transmission, in such a way that members of the public may access that work from a place and at a time they themselves select.

12. *An invention* means a technical solution in form of a product or a process which is intended to solve a problem by application of laws of nature.

13. *An industrial design* means a specific appearance of a product embodied by three-dimensional configurations, lines, colors, or a combination of these elements.

14. *A semiconductor integrated circuit* means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. Integrated circuit is synonymous to IC, chip and microelectronic circuit.

15. *A layout-design of semiconductor integrated circuit* (hereinafter referred to as layout-design) means a three-dimensional disposition of circuit elements and their interconnections in a semiconductor integrated circuit.

16. *A mark* means any sign used to distinguish goods and/or services of different organizations or individuals.

17. *A collective mark* means a mark used to distinguish goods and/or services of members from those of non-members of an organization which is the owner of such mark.

18. *A certification mark* means a mark which is authorized by its owner to be used by another organization or individual on the latter’s goods and/or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods and/or services bearing the mark.

19. *An integrated mark* means identical or similar marks registered by the same entity and intended for use on products or services which are of the same type or similar types or interrelated.

20. *A well-known mark* means a mark widely known by consumers throughout the Vietnamese territory.

21. *A trade name* means a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing it from another entity in the same business domain and area.

A business area mentioned in this Clause means a geographical area where a business entity has its partners, customers or earns its reputation.

22. *A geographical indication* means a sign which identifies a product as originating from a specific region, locality, territory or country.

23. *A trade secret* means information obtained from activities of financial and/or intellectual investment, which has not yet been disclosed and can be used in business.

24. *A plant variety* means a plant grouping within a single botanical taxon of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes, and distinguished from any other plant grouping by the expression of at least one inheritable phenotype.

25. *A protection title* means a document granted by the competent state agency to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout-design, trademark or geographical indication; or rights to a plant variety.

Article 5.- Application of law

1. Where there exist intellectual property-related civil matters which are not provided for in this Law, the provisions of the Civil Code shall apply.

2. Where there exist differences between this Law's provisions on intellectual property and those of other laws, the provisions of this Law shall apply.

3. Where a treaty to which the Socialist Republic of Vietnam is a contracting party contains provisions different from those of this Law, the provisions of such treaty shall apply.

Article 6.- Bases for the emergence and establishment of intellectual property rights

1. Copyright shall arise at the moment when a work is created and fixed in a certain material form, irrespective of its content, quality, presentation, means of fixation, language and whether or not it has been published or registered.

2. Related rights shall arise at the moment when a performance, phonogram, video recording, broadcast or encrypted program-carrying satellite signal is fixed or displayed without any prejudice to copyright.

3. Industrial property rights are established as follows:

a/ Industrial property rights to an invention, industrial design, layout-design, mark or geographical indication shall be established on the basis of a decision of the competent state agency on the grant of a protection title according to the registration procedures stipulated in this Law or the recognition of international registration under treaties to which the Socialist Republic of Vietnam is a contracting party; for a well-known mark, industrial property rights shall be established on the basis of use process, not subject to any registration procedures.

b/ Industrial property rights to a trade name shall be established on the basis of lawful use thereof;

c/ Industrial property rights to a trade secret shall be established on the basis of lawful acquirement and confidentiality thereof;

d/ Rights to repression of unfair competition shall be established on the basis of competition in business.

4. Rights to a plant variety shall be established on the basis of a decision of the competent state agency on the grant of plant variety protection title according to the registration procedures specified in this Law.

Article 7.- Limitations on intellectual property rights

1. Intellectual property right holders shall only exercise their rights within the scope and term of protection provided for in this Law.

2. The exercise of intellectual property rights must neither be prejudicial to the State's interests, public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law.

3. In the circumstances where the achievement of defense, security, people's life-related objectives and other interests of the State and society specified in this Law should be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals with appropriate terms.

Article 8.- The State's intellectual property policies

1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; not to protect intellectual property objects which are contrary to the social ethics and public order and prejudicial to defense and security.

2. To encourage and promote activities of creation and utilization of intellectual assets in order to contribute to the socio-economic development and the improvement of the people's material and spiritual life.

3. To provide financial supports for the receipt and exploitation of assigned intellectual property rights for public interests; to encourage organizations and individuals at home or abroad to provide financial aids for creative activities and the protection of intellectual property rights.

4. To prioritize investment in training and fostering the contingent of cadres, public servants and other relevant subjects engaged in the protection of intellectual property rights and the research into and application of sciences and techniques to the protection of intellectual property rights.

Article 9.- Right and responsibility of organizations and individuals for the protection of intellectual property rights

Organizations and individuals have the right to apply measures allowed by law to protect their intellectual property rights and have the responsibility to respect intellectual property rights of other organizations and individuals in accordance with the provisions of this Law and other relevant provisions of law.

Article 10.- Contents of state management of intellectual property

1. Formulating and directing the materialization of strategies and policies on protection of intellectual property rights.

2. Promulgating and organizing the implementation of legal documents on intellectual property.

3. Organizing the apparatus for management of intellectual property; training and fostering intellectual property personnel.

4. Granting and carrying out other procedures related to registered copyright certificates, registered related rights certificates, protection titles for industrial property objects and plant variety protection titles.

5. Inspecting and examining the observance of intellectual property law; settling complaints and denunciations, and handling violations of intellectual property law.

6. Organizing intellectual property information and statistical activities.

7. Organizing and managing intellectual property assessment activities.

8. Educating, communicating and disseminating intellectual property knowledge and law.

9. Entering into international cooperation on intellectual property.

Article 11.- Responsibilities for state management of intellectual property

1. The Government shall exercise unified state management of intellectual property.

2. The Science and Technology Ministry shall be answerable to the Government for assuming the prime responsibility for, and coordinating with the Culture and Information Ministry and the Agriculture and Rural Development Ministry in, performing the state management of intellectual property and the state management of industrial property rights.

The Culture and Information Ministry shall, within the ambit of its tasks and powers, perform the state management of copyright and related rights.

The Agriculture and Rural Development Ministry shall, within the ambit of its tasks and powers, perform the state management of rights to plant varieties.

3. Ministries, ministerial-level agencies and Government-attached agencies shall, within the ambit of their tasks and powers, have to coordinate with the Science and Technology Ministry, the Culture and Information Ministry, the Agriculture and Rural Development Ministry and provincial/municipal People's Committees in performing the state management of intellectual property.

4. People's Committees at all levels shall perform the state management over intellectual property in their localities.

5. The Government shall specify the powers and responsibilities for state management of intellectual property of the Science and Technology Ministry, the Culture and Information Ministry, the Agriculture and Rural Development Ministry and People's Committees at all levels.

Article 12.- Intellectual property fees and charges

Organizations and individuals shall have to pay fees and/or charges when carrying out the procedures related to intellectual property rights according to the provisions of this Law and other relevant provisions of law.

Part Two
COPYRIGHT AND RELATED RIGHTS

Chapter I
CONDITIONS FOR PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Section 1. CONDITIONS FOR PROTECTION OF COPYRIGHT

Article 13.- Authors and copyright holders that have works covered by copyright

1. Organizations and individuals that have works covered by copyright include persons who personally create such works and copyright holders defined in Articles 37 thru 42 of this Law.

2. Authors and copyright holders defined in Clause 1 of this Article include Vietnamese organizations and individuals; foreign organizations and individuals that have works first published in Vietnam and not yet published in any other country, or simultaneously published in Vietnam within thirty days after its first publication in another country; foreign organizations and individuals that have works protected in Vietnam under international conventions on copyright to which the Socialist Republic of Vietnam is a contracting party.

Article 14.- Types of works covered by copyright

1. Literary, artistic and scientific works covered by copyright include:

a/ Literary and scientific works, textbooks, teaching courses and other works expressed in written languages or other characters;

b/ Lectures, addresses and other sermons;

c/ Press works;

d/ Musical works;

e/ Dramatic works;

f/ Cinematographic works and works created by a process analogous to cinematography (hereinafter referred to collectively as cinematographic works);

g/ Plastic-art works and works of applied art;

h/ Photographic works;

i/ Architectural works;

j/ Sketches, plans, maps and drawings related to topography or scientific works;

k/ Folklore and folk art works of folk culture;

l/ Computer programs and compilations of data.

2. Derivative works shall be protected according to the provisions of Clause 1 of this Article only if it is not prejudicial to the copyright to works used to create such derivative works.

3. Protected works defined in Clauses 1 and 2 of this Article must be created personally by authors through their intellectual labor without copying others' works.

4. The Government shall guide in detail the types of works specified in Clause 1 of this Article.

Article 15.- Subject matters not covered by copyright protection

1. News of the day as mere items of press information.

2. Legal documents, administrative documents and other documents in the judicial domain and official translations of these documents.

3. Processes, systems, operation methods, concepts, principles and data.

Section 2. CONDITIONS FOR PROTECTION OF RELATED RIGHTS

Article 16.- Organizations and individuals eligible for protection of related rights

1. Actors/actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works (hereinafter referred to collectively as performers).

2. Organizations and individuals that own performances defined in Clause 1, Article 44 of this Law.

3. Organizations and individuals that first fix sounds and images of performances or other sounds and images (hereinafter referred to collectively as producers of phonograms and video recordings).

4. Organizations which initiate and carry out the broadcasting (hereinafter referred to as broadcasting organizations).

Article 17.- Subject matters of related rights eligible for protection

1. Performances shall be protected if they fall into one of the following cases:

a/ They are made by Vietnamese citizens in Vietnam or abroad;

b/ They are made by foreigners in Vietnam;

c/ They are fixed on phonograms or video recordings, and protected under the provisions of Article 30 of this Law;

d/ They have not yet been fixed on phonograms or video recordings but already been broadcast, and are protected under the provisions of Article 31 of this Law;

e/ They are protected under treaties to which the Socialist Republic of Vietnam is a contracting party.

2. Phonograms and video recordings shall be protected if they fall into one of the following cases:

a/ They belong to phonogram and video recording producers bearing the Vietnamese nationality;

b/ They belong to phonogram and video recording producers protected under treaties to which the Socialist Republic of Vietnam is a contracting party.

3. Broadcasts and encrypted program-carrying satellite signals shall be protected if they fall into one of the following cases:

a/ They belong to broadcasting organizations bearing the Vietnamese nationality;

b/ They belong to broadcasting organizations protected under treaties to which the Socialist Republic of Vietnam is a contracting party.

4. Performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals shall only be protected under the provisions of Clauses 1, 2 and 3 of this Article provided that they are not prejudicial to copyright.

Chapter II
CONTENTS OF, LIMITATIONS ON AND TERM OF PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Section 1. CONTENTS OF, LIMITATIONS ON AND TERM OF PROTECTION OF COPYRIGHT

Article 18.- Copyright

Copyright to works provided for in this Law consists of moral rights and economic rights.

Article 19.- Moral rights

Moral rights of authors include the following rights:

1. To title their works;

2. To attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used;

3. To publish their works or authorize other persons to publish their works;

4. To protect the integrity of their works, and to prevent other persons from modifying, mutilating or distorting their works in whatever form prejudicial to their honor and reputation.

Article 20.- Economic rights

1. Economic rights of authors include the following rights:

a/ To make derivative works;

b/ To display their works to the public;

c/ To reproduce their works;

d/ To distribute or import original works or copies thereof;

e/ To communicate their works to the public by wire or wireless means, electronic information networks or any other technical means;

f/ To lease original cinematographic works and computer programs or copies thereof.

2. The rights specified in Clause 1 of this Article shall be exclusively exercised by authors or copyright holders, or granted by authors or copyright holders to other persons for exercise under the provisions of this Law.

3. Organizations and individuals, when exercising one, several or all of the rights specified in Clause 1, this Article and Clause 3, Article 19 of this Law, shall have to ask for permission of and pay royalties, remunerations and other material benefits to copyright holders.

Article 21.- Copyright to cinematographic works and dramatic works

1. Persons who act as directors; screenwriters; cameramen; montage-makers; music composers; art designers; studio sound, lighting and art designers; studio instrument and technical-effect designers, and persons engaged in other creative jobs in the making of cinematographic works, shall enjoy the rights specified in Clauses 1, 2 and 4, Article 19 of this Law and other agreeable rights.

Persons who act as directors, playwrights, choreographers, music composers, art designers, stage sound, lighting and art designers, stage instrument and technical-effect designers, and persons engaged in other creative jobs in the making of dramatic works, shall enjoy the rights specified in Clauses 1, 2 and 4, Article 19 of this Law and other agreeable rights.

2. Organizations and individuals that invest their finance and material-technical facilities in the production of cinematographic works and dramatic works shall be holders of the rights specified in Clause 3, Article 19 and Article 20 of this Law.

3. Organizations and individuals defined in Clause 2 of this Article are obliged to pay royalties, remunerations and other material benefits as agreed upon with the persons defined in Clause 1 of this Article.

Article 22.- Copyright to computer programs and compilations of data

1. A computer program means a set of instructions which is expressed in form of commands, codes, diagrams or any other form and, when incorporated in a device readable to computers, capable of enabling such computers to perform a job or achieve a designated result.
Computer programs shall be protected like literary works, irrespective of whether they are expressed in form of source codes or machine codes.

2. A compilation of data means a set of data selected or arranged in a creative manner and expressed in electronic form or other forms.
The protection of copyright to compilations of data does not cover, and is not prejudicial to copyright to those very data.

Article 23.- Copyright to folklore or folk art works of folklore

1. Folklore or folk art works mean collective creations based on traditions of a community or individuals reflecting such community's earnest expectations, of which the expression is appropriate to its cultural and social characteristics, and its standards and values, which have been handed down by imitation or other modes. Folklore and folk art works include:

a/ Folk tales, lyrics and riddles;

b/ Folk songs and melodies;

c/ Folk dances, plays, rites and games;

d/ Folk art products, including graphics, paintings, sculptures, musical instruments, architectural models, and products of other folk arts expressed in whatever material form.

2. Organizations and individuals using folklore and folk art works of folklore must refer to their sources and preserve their true values.

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

The protection of copyright to literary, artistic and scientific works provided for in Clause 1, Article 14 of this Law shall be specified by the Government.

Article 25.- Cases of use of published works where permission and payment of royalties and/or remunerations are not required

1. Cases of use of published works where permission or payment of royalties and/or remunerations is not required include:

a/ Duplication of works by authors for scientific research or teaching purpose;

b/ Reasonable recitation of works without misrepresenting the authors' views for commentary or illustrative purpose;

c/ Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;

d/ Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose;

e/ Reprographic reproduction of works by libraries for archival and research purpose;

f/ Performance of dramatic works or other performing-art works in mass cultural, communication or mobilization activities without collecting any charges in any form;

g/ Audiovisual recording of performances for purpose of reporting current events or for teaching purpose;

h/ Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for purpose of presenting images of such works;

i/ Transcription of works into Braille or characters of other languages for the blind;

j/ Importation of copies of others' works for personal use.

2. Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause prejudice to rights of the authors and/or copyright holders; and must indicate the authors' names, and sources and origins of the works.

3. The use of works in the cases specified in Clause 1 of this Article shall not apply to architectural works, plastic works and computer programs.

Article 26.- Cases of use of published works where permission is not required or but the payment of royalties and/or remunerations is required

1. Broadcasting organizations which use published works in making their broadcasts, which are sponsored, advertised or charged in whatever form, shall not have to obtain permission but have to pay royalties or remunerations to copyright holders according to the Government's regulations.

2. Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause any prejudice to the rights of the authors and/or copyright holders; and must indicate the authors' names, and sources and origins of the works.

3. The use of works in the cases specified in Clause 1 of this Article shall not apply to cinematographic works.

Article 27.- Term of copyright protection

1. The moral rights provided for in Clauses 1, 2 and 4, Article 19 of this Law shall be protected for an indefinite term.

2. The moral rights provided for in Clause 3, Article 19 and the economic rights provided for in Article 20 of this Law shall enjoy the following terms of protection:

a/ Cinematographic works, photographic works, dramatic works, works of applied art and anonymous works shall have the term of protection of fifty years as from the date of first publication. Within fifty years after the fixation of a cinematographic work or dramatic work, if such work has not been published, the term of protection shall be calculated from the date of its fixation. For anonymous works, when information on their authors appear, the term of protection shall be calculated under the provisions of Point b of this Clause.

b/ A work not specified at Point a of this Clause shall be protected for the whole life of the author and for fifty years after his/her death. For a work under joint authorship, the term of protection shall expire in the fiftieth year after the death of the last surviving co-author;

c/ The term of protection specified at Points a and b of this Clause shall expire at 24:00 hrs of December 31 of the year of expiration of copyright protection term.

Article 28.- Acts of infringing upon copyright

1. Appropriating copyright to literary, artistic or scientific works.

2. Impersonating authors.

3. Publishing or distributing works without permission of authors.

4. Publishing or distributing works under joint-authorship without permission of co-authors.

5. Modifying, mutilating or distorting works in such a way as prejudicial to the honor and reputation of authors.

6. Reproducing works without permission of authors or copyright holders, except for the cases specified at Points a and e, Clause 1, Article 25 of this Law.

7. Making derivative works without permission of authors or holders of copyright to works used for the making of derivative works, except for the cases specified at Point i, Clause 1, Article 25 of this Law;

8. Using works without permission of copyright holders, without paying royalties, remunerations or other material benefits according to the provisions of law, except for the cases specified in Clause 1, Article 25 of this Law.

9. Leasing works without paying royalties, remunerations or other material benefits to authors or copyright holders.

10. Duplicating, reproducing, distributing, displaying or communicating works to the public via communication networks and by digital means without permission of copyright holders.

11. Publishing works without permission of copyright holders.

12. Willingly canceling or deactivating technical solutions applied by copyright holders to protect copyright to their works.

13. Willingly deleting or modifying right management information in electronic form in works.

14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment may deactivate technical solutions applied by copyright holders to protect copyright to their works.

15. Making and selling works with forged signatures of authors of original works.

16. Exporting, importing or distributing copies of works without permission of copyright holders.

Section 2. CONTENTS OF, LIMITATIONS ON, AND TERM OF PROTECTION OF RELATED RIGHTS

Article 29.- Rights of performers

1. Performers-cum-investors shall have the moral rights and economic rights to their performances. Where performers are not also investors, performers shall have the moral rights whereas investors shall have the economic rights to performances.

2. Moral rights include the following rights:

a/ To be acknowledged when performing or distributing phonograms, video recordings, or broadcasting performances;

b/ To protect the integrity of performed figures, prevent others from modifying, mutilating or distorting works in whatever form prejudicial to the honor and reputation of performers.

3. Economic rights include exclusive rights to exercise or authorize others to exercise the following rights:

a/ To fix their live performances on phonograms or video recordings;

b/ To directly or indirectly reproduce their performances which have been fixed on phonograms or video recordings;

c/ To broadcast or otherwise communicate to the public their unfixed performances in a way accessible by the public, except where such performances are intended for broadcasting;

d/ To distribute to the public their original performances and copies thereof by mode of sale, rental or distribution by whatever technical means accessible by the public.

4. Organizations and individuals that exploit and use the rights provided for in Clause 3 of this Article shall have to pay remunerations to performers according to the provisions of law or under agreements in the absence of relevant provisions of law.

Article 30.- Rights of producers of phonograms and video recordings

1. Producers of phonograms and video recordings shall have the exclusive right to exercise or authorize others to exercise the following rights:

a/ To directly or indirectly reproduce their phonograms and video recordings;

b/ To distribute to the public their original phonograms and video recordings and copies thereof by mode of sale, rent or distribution by whatever technical means accessible by the public.

2. Producers of phonograms and video recordings shall enjoy material benefits when their phonograms and video recordings are distributed to the public.

Article 31.- Rights of broadcasting organizations

1. Broadcasting organizations shall have the exclusive right to exercise or authorize others to exercise the following rights:

a/ To broadcast or rebroadcast their broadcasts;

b/ To distribute to the public their broadcasts;

c/ To fix their broadcasts;

d/ To reproduce their fixed broadcasts.

2. Broadcasting organizations shall enjoy material benefits when their broadcasts are recorded and distributed to the public.

Article 32.- Cases of use of related rights where permission and payment of royalties and/or remunerations are not required

1. Cases of use of related rights where permission and payment of royalties and/or remunerations are not required include:

a/ Duplication of works by authors for scientific research purpose;

b/ Duplication of works by authors for teaching purpose, except for performances, phonograms, video recordings or broadcasts which have been published for teaching purpose;

c/ Reasonable recitation for informatory purpose;

d/ Making of provisional copies of works by broadcasting organizations themselves for broadcasting purpose when they enjoy the broadcasting right.

2. Organizations and individuals that use the rights specified in Clause 1 of this Article must neither affect the normal utilization of performances, phonograms, video recordings or broadcasts, nor cause any prejudice to the rights of performers, producers of phonograms and video recordings, and broadcasting organizations.

Article 33.- Cases of use of related rights where permission is not required but payment of royalties and/or remunerations is required

1. Organizations and individuals that use related rights in the following cases shall not have to ask for permission but must pay agreed royalties and/or remunerations to performers, producers of phonograms and/or video recordings, or broadcasting organizations:

a/ They directly or indirectly use phonograms or video recordings already published for commercial purposes in making their broadcasts, which are sponsored, advertised or charged in whatever form;

b/ They use phonograms or video recordings already published in business or commercial activities.

2. Organizations and individuals that use the rights specified in Clause 1 of this Article must neither affect the normal utilization of performances, phonograms, video recordings or broadcasts, nor cause any prejudice to the rights of performers, producers of phonograms and video recordings, and broadcasting organizations.

Article 34.- Term of related right protection

1. The rights of performers shall be protected for fifty years counting from the year following the year of fixation of their performances.

2. The rights of producers of phonograms or video recordings shall be protected for fifty years counting from year following the year of publication, or fifty years counting from the year following the year of fixation of unpublished phonograms or video recordings.

3. The rights of broadcasting organizations shall be protected for fifty years counting from the year following the year of the making of their broadcasts.

4. The term of protection specified in Clauses 1, 2 and 3 of this Article shall expire at 24:00 hrs of December 31 of the year of expiration of related right protection term.

Article 35.- Acts of infringing upon related rights

1. Appropriating the rights of performers, producers of phonograms and/or video recordings and broadcasting organizations.

2. Impersonating performers, producers of phonograms and video recordings and broadcasting organizations.

3. Publishing, producing and distributing fixed performances, phonograms, video recordings and broadcasts without permission of performers, producers of phonograms and video recordings and broadcasting organizations.

4. Modifying, mutilating or distorting performances in whatever form prejudicial to the honor and reputation of performers.

5. Copying or reciting fixed performances, phonograms, video recordings and broadcasts without permission of performers, producers of phonograms and video recordings and broadcasting organizations.

6. Disengaging or modifying right management information in electronic form without permission of related right holders.

7. Willingly canceling or deactivating technical solutions applied by related right holders to protect their related rights

8. Publishing, distributing or importing for public distribution performances, copies of fixed performances or phonograms or video recordings when knowing or having grounds to know that right management information in electronic form has been disengaged or modified without permission of related right holders.

9. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment help illegally decode an encrypted program-carrying satellite signal.

10. Willingly receiving or relaying an encrypted program-carrying satellite signal when such signal has been encoded without permission of the legal distributor.

Chapter III
COPYRIGHT HOLDERS, RELATED RIGHT HOLDERS

Article 36.- Copyright holders

Copyright holders mean organizations and individuals that hold one, several or all the economic rights specified in Article 20 of this Law.

Article 37.- Copyright holders being authors

Authors who use their own time, finance and material-technical foundations to create works shall have the moral rights specified in Article 19 and the economic rights specified in Article 20 of this Law.

Article 38.- Copyright holders being co-authors

1. Co-authors who use their time, finance and material-technical foundations to jointly create works shall share the rights specified in Articles 19 and 20 of this Law to such works.

2. A co-author defined in Clause 1 of this Article who has jointly created a work, a separate part of which can be detached for independent use without any prejudice to parts of other co-authors, shall have the rights specified in Articles 19 and 20 of this Law to such separate part.

Article 39.- Copyright holders being organizations and individuals that have assigned tasks to authors or entered into contracts with authors

1. Organizations which have assigned tasks of creating works to authors who belong to them shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law, unless otherwise agreed.

2. Organizations and individuals that have entered into contracts with authors for creation of works shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law, unless otherwise agreed.

Article 40.- Copyright holders being heirs

Organizations and individuals that inherit the copyright according to the provisions of law on inheritance shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law.

Article 41.- Copyright holders being right assignees

Organizations and individuals that are assigned one, several or all of the rights specified in Article 20 and Clause 3, Article 19 of this Law under contracts shall be copyright holders.

Article 42.- Copyright holders being the State

1. The State shall be the holder of copyright to the following works:

a/ Anonymous works;

b/ Works, of which terms of protection have not expired but their copyright holders die in default of heirs, heirs renounce succession or are deprived of the right to succession.

c/ Works, over which the ownership right has been assigned by their copyright holders to the State.

2. The Government shall specify the use of works under the State ownership.

Article 43.- Works belonging to the public

1. Works, of which terms of protection have expired according to the provisions of Article 27 of this Law shall belong to the public.

2. All organizations and individuals shall be entitled to use works defined in Clause 1 of this Article but must respect the moral rights of the authors specified in Article 19 of this Law.

3. The Government shall specify the use of works belonging to the public.

Article 44.- Related right holders

1. Organizations and individuals that use their time and invest their finance and material-technical foundations in making performances shall be owners of such performances, unless otherwise agreed with the concerned parties.

2. Organizations and individuals that use their time and invest their finance and material-technical foundations in producing phonograms and/or video recordings shall be owners of such phonograms and/or video recordings, unless otherwise agreed with the concerned parties.

3. Broadcasting organizations shall be owners of their broadcasts, unless otherwise agreed with concerned parties.

Chapter IV
TRANSFER OF COPYRIGHT AND RELATED RIGHTS

Section 1. ASSIGNMENT OF COPYRIGHT AND RELATED RIGHTS

Article 45.- General provisions on assignment of copyright and related rights

1. The assignment of copyright and related rights means the transfer by copyright holders or related right holders of the ownership of the rights specified in Clause 3, Article 19; Article 20; Clause 3, Article 29; Articles 30 and 31 of this Law to other organizations and individuals under contracts or according to the relevant provisions of law.

2. Authors must not assign the moral rights specified in Article 19, except the right of publication; performers must not assign the moral rights specified in Clause 2, Article 29 of this Law.

3. Where a work, performance, phonogram, video recording or broadcast is under joint ownership, the assignment thereof must be agreed upon by all co-owners. In case of joint ownership but a work, performance, phonogram, video recording or broadcast is composed of separate parts which can be detached for independent use, copyright holders or related right holders may assign their copyright or related rights to their separate parts to other organizations or individuals.

Article 46.- Copyright or related right assignment contracts

1. A copyright or related right assignment contract must be established in writing and include the following principal contents:

a/ Names and addresses of the assignor and the assignee;

b/ Assignment bases;

c/ Payment price and mode;

d/ Rights and obligations of the involved parties;

e/ Liability for contract breaches.

2. The performance, amendment, termination or cancellation of copyright or related right assignment contracts shall comply with the provisions of the Civil Code.

Section 2. LICENSING OF COPYRIGHT AND RELATED RIGHTS

Article 47.- General provisions on licensing of copyright and related rights

1. Licensing of copyright and related rights means the permission by copyright holders or related right holders for other organizations and individuals to use for a definite term one, several or all the rights specified in Clause 3, Article 19; Article 20; Clause 3, Article 29; Articles 30 and 31 of this Law.

2. Authors must not license the moral rights specified in Article 19, except the right of publication; performers must not license the moral rights specified in Clause 2, Article 19 of this Law.

3. Where a work, performance, phonogram, video recording or broadcast is under joint ownership, the licensing of copyright or related rights must be agreed upon by all co-owners. In case of joint ownership but a work, performance, phonogram, video recording or broadcast is composed of separate parts which can be detached for independent use, copyright holders or related right holders may license their copyright or related rights to their separate parts to other organizations or individuals.

4. Organizations and individuals that are licensed copyright or related rights may license other organizations and individuals when obtaining the permission of copyright holders or related right holders.

Article 48.- Copyright or related right license contracts

1. A copyright or related right license contract must be established in writing and include the following principal contents:

a/ Full names and addresses of the licensor and the licensee;

b/ Licensing bases;

c/ Licensing scope;

d/ Payment price and mode;

e/ Rights and obligations of the involved parties;

f/ Liability for contract breaches.

2. The performance, amendment, termination or cancellation of copyright or related right license contracts shall comply with the provisions of the Civil Code.

Chapter V
CERTIFICATES OF REGISTERED COPYRIGHT OR RELATED RIGHTS

Article 49.- Registration of copyright or related rights

1. The registration of copyright and related rights means the filing of applications and enclosed dossiers (hereinafter referred to collectively as applications) by authors, copyright holders or related

right holders with the competent state agencies for recording of information on authors, works, copyright holders and related right holders.

2. The filing of applications for grant of certificates of registered copyright or certificates of registered related rights is not a compulsory formality for enjoyment of copyright or related rights according to the provisions of this Law.

3. Organizations and individuals that are granted certificates of registered copyright or certificates of registered related rights shall not have to bear the burden of proof of such copyright and related rights upon disputes, unless rebutting proofs are adduced.

Article 50.- Applications for registration of copyright or related rights

1. Authors, copyright holders or related right holders may directly file or authorize other organizations or individuals to file applications for registration of copyright or related rights.

2. An application for registration of copyright or related rights comprises:

a/ A written declaration for registration of copyright or related rights.

A written declaration must be made in Vietnamese and signed by the author, copyright holder, related rights holder or person authorized to file the application, fully stating the information on the applicant, author, copyright holder or related rights holder; summarized content of the work, performance, phonogram, video recording or broadcast; the name of the author, the title of the work used to make derivative work in cases where the to be-registered work is a derivative work; the date, place and form of publication; the guaranteed responsibility for information stated in the application.

The Culture and Information Ministry shall set the form of written declarations for copyright or related right registration;

b/ Two copies of the work subject to application for copyright registration, or two copies of the fixed object subject to the related right registration;

c/ A letter of authorization where the applicant is the authorized person;

d/ Documents proving the right to file application where the applicant acquires such right due to inheritance, succession from or assignment by another person;

e/ Written consent of co-authors, for works under joint authorship;

f/ Written consent of co-owners if the copyright or related rights are under joint-ownership.

3. The documents specified at Point c, d, e and f, Clause 2 of this Article must be made in Vietnamese. Documents in foreign languages must be translated into Vietnamese.

Article 51.- Competence to grant registered copyright certificates, registered related rights certificates

1. The state management agency in charge of copyright and related rights is competent to grant registered copyright certificates and registered related rights certificates.

2. The state agency competent to grant registered copyright certificates and registered related rights certificates can re-grant, renew or revoke such certificates.

3. The Government specifies the conditions, order and procedures for re-grant, renewal and revocation of registered copyright certificates and registered related rights certificates.

4. The Culture and Information Ministry sets the forms of registered copyright certificates and registered related rights certificates.

Article 52.- Time limit for granting registered copyright certificates or registered related rights certificates

Within fifteen working days after the receipt of a valid dossier, the state management agency in charge of copyright and related rights shall have to grant a registered copyright certificate or registered related rights certificate to the applicant. In case of refusal to grant registered copyright certificates or registered related rights certificates, the state management agency in charge of copyright and related rights must notify such in writing to the applicants.

Article 53.- Validity of registered copyright certificates and registered related rights certificates

1. Registered copyright certificates and registered related rights certificates shall be valid throughout the Vietnamese territory.

2. Registered copyright certificates and registered related rights certificates, which have been granted by the state management agency in charge of copyright and related rights before the effective date of this Law shall continue to be valid.

Article 54.- Recording and publication of registered copyright or registered related rights

1. Registered copyright certificates and registered related rights certificates shall be recorded in the national register of copyright and related rights.

2. Decisions on grant, re-grant, renewal or revocation of registered copyright certificates and registered related rights certificates shall be published in the Official Gazette on copyright and related rights.

Article 55.- Re-grant, renewal and revocation of registered copyright certificates and registered related rights certificates

1. Where a registered copyright certificate or registered related rights certificate is lost or damaged, or where the copyright holder or related rights holder is changed, the competent agency defined in Clause 2, Article 51 of this Law shall re-grant or renew such registered copyright certificate or registered related rights certificate.

2. Where a registered copyright certificate or registered related rights certificate grantee is not the author, copyright holder or related right holder, or where the registered work, phonogram, video recording or broadcast is ineligible for protection, the competent state agency defined in Clause 2, Article 51 of this Law shall revoke such registered copyright certificate or registered related rights certificate.

3. Organizations and individuals that detect that the grant of registered copyright certificates and/or registered related rights certificates is contrary to the provisions of this Law are entitled to request the state management agency in charge of copyright and related rights to revoke such registered copyright certificates and registered related rights certificates.

Chapter VI
COPYRIGHT AND RELATED RIGHTS REPRESENTATION, CONSULTANCY AND SERVICE ORGANIZATIONS

Article 56.- Organizations acting as collective representatives of copyright and related rights

1. Organizations acting as collective representatives of copyright and/or related rights are not-for-profit organizations established under agreements among authors, copyright holders and/or related right holders and operating according to the provisions of law for protection of copyright and related rights.

2. Organizations acting as collective representatives of copyright and/or related rights shall conduct the following activities under authorization by authors, copyright holders and/or related right holders:

a/ Performing the management of copyright and/or related rights; conducting negotiations for licensing, collection and division of royalties, remunerations and other material benefits from the exercise of authorized rights;

b/ Protecting legitimate rights and interests of their members; organizing conciliations upon occurrence of disputes.

3. Organizations acting as collective representatives of copyright and/or related rights shall have the following rights and duties:

a/ To conduct creation-promoting activities and other social activities;

b/ To cooperate with their counterparts in international and national organizations on the protection of copyright and related rights;

c/ To make regular and irregular reports on collective representation activities to competent state agencies;

d/ Other rights and duties according to the provisions of law.

Article 57.- Copyright and related right consultancy and service organizations

1. Copyright and related right consultancy and service organizations are established and operate according to the provisions of law.

2. Copyright and related right consultancy and service organizations shall conduct the following activities at the request of authors, copyright holders, related right holders:

a/ Providing consultancy on issues related to the provisions of law on copyright and/or related rights;

b/ Carrying out, on the behalf of copyright holders or related right holders, the procedures for filing applications for registration of copyright or related rights under authorization;

c/ Joining other legal relations on copyright, related rights, protection of legitimate rights and interests of authors, copyright holders and related right holders under authorization.

Part Three
INDUSTRIAL PROPERTY RIGHTS

Chapter VII
CONDITIONS FOR PROTECTION OF INDUSTRIAL PROPERTY RIGHTS

Section 1. PROTECTION CONDITIONS FOR INVENTIONS

Article 58.- General conditions for inventions eligible for protection

1. An invention shall be protected by mode of grant of invention patent when it satisfies the following conditions:

a/ Being novel;

b/ Involving an inventive step;

c/ Being susceptible of industrial application.

2. Unless it is a common knowledge, an invention shall be protected by mode of grant of utility solution patent when it satisfies the following conditions:

a/ Being novel;

b/ Being susceptible of industrial application.

Article 59.- Subject matters not protected as inventions

The following subject matters shall not be protected as inventions:

1. Scientific discoveries or theories, mathematical methods;

2. Schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games, doing business; computer programs;

3. Presentations of information;

4. Solutions of aesthetical characteristics only;

5. Plant varieties, animal breeds;

6. Processes of plant or animal production which are principally of biological nature other than microbiological ones;

7. Human and animal disease prevention, diagnostic and treatment methods.

Article 60.- Novelty of inventions

1. An invention shall be considered novel if it has not yet been publicly disclosed through use or by means of a written description or any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the invention registration application.

2. An invention shall be considered having not yet been publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.

3. An invention shall not be considered having lost its novelty if it is published in the following cases, provided that the invention registration application is filed within 6 months from the date of publication:

a/ It is published by another person without permission of the person having the right to register it defined in Article 86 of this Law;

b/ It is published in the form of a scientific presentation by the person having the right to register it defined in Article 86 of this Law;

c/ It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it defined in Article 86 of this Law.

Article 61.- Inventive step of inventions

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

Article 62.- Susceptibility of industrial application of inventions

An invention shall be considered susceptible of industrial application if it is possible to realize mass manufacture or production of products or repeated application of the process that is the subject mater of the invention, and to achieve stable results.

Section 2. PROTECTION CONDITIONS FOR INDUSTRIAL DESIGNS

Article 63.- General conditions for industrial designs eligible for protection

An industrial design shall be protected when it satisfies the following conditions:

1. Being new;

2. Being creative;

3. Being susceptible of industrial application.

Article 64.- Subject matters not protected as industrial designs

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

1. Appearance of a product, which is dictated by the technical features of the product;

2. Appearance of a civil or an industrial construction work;

3. Shape of a product, which is invisible during the use of the product.

Article 65.- Novelty of industrial designs

1. An industrial design shall be considered new if it significantly differs from other industrial designs that are already publicly disclosed through use or by means of written descriptions or in any other form, inside or outside the country, prior to the filing date or the priority date, as applicable, of the industrial design registration application.

2. Two industrial designs shall not be considered significantly different from each other if they are only different in appearance features which are not easily noticeable and memorable and which cannot be used to distinguish these industrial designs as whole.

3. An industrial design shall be considered having not yet been publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.

4. An industrial design shall not be considered having lost its novelty if it is published in the following cases, provided that the industrial design registration application is filed within 6 months from the date of publication:

a/ It is published by another person without permission of the person having the right to register it defined in Article 86 of this Law;

b/ It is published in the form of a scientific presentation by the person having the right to register it defined in Article 86 of this Law;

c/ It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it defined in Article 86 of this Law.

Article 66.- Creativity of industrial designs

An industrial design shall be considered creative if, based on industrial designs already publicly disclosed through use or by means of written descriptions or in any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the industrial design registration application, it cannot be easily created by a person with average knowledge in the art.

Article 67.- Susceptibility of industrial application of industrial designs

An industrial design shall be considered susceptible of industrial application if it can be used as a model for mass manufacture of products with appearance embodying such industrial design by industrial or handicraft methods.

Section 3. PROTECTION CONDITIONS FOR LAYOUT-DESIGNS

Article 68.- General conditions for layout-designs eligible for protection

A layout-design shall be protected when it satisfies the following conditions:

1. Being original;

2. Being commercially novel.

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

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

1. Principles, processes, systems or methods operated by semiconductor integrated circuits;

2. Information or software contained in semiconductor integrated circuits.

Article 70.- Originality of layout-designs

1. A layout-design shall be considered original if it satisfies the following conditions:

a/ Being result of its author’s creative labor;

b/ Having not been widely known among creators of layout-designs or manufacturers of semiconductor integrated circuits at the time of its creation.

2. A layout-design that is a combination of elements and common interconnections shall be considered to be original only if such combination, taken as a whole, is original according to the provisions of Clause 1 of this Article.

Article 71.- Commercial novelty of layout-designs

1. A layout-design shall be considered commercially novel if it has not yet been commercially exploited anywhere in the world prior to the filing date of the registration application.

2. A layout-design shall not be considered having lost its commercial novelty if the layout-design registration application is filed within 2 years from the date it was commercially exploited for the first time anywhere in the world by the person who has the right to register it defined in Article 86 of this Law or his/her licensee.

3. Commercial exploitation of a layout-design mentioned in Clause 2 of this Article means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by incorporation of such layout-design, or a commodity containing such semiconductor integrated circuit.

Section 4. PROTECTION CONDITIONS FOR MARKS

Article 72.- General conditions for marks eligible for protection

A mark shall be protected when it satisfies the following conditions:

1. Being a visible sign in the form of letters, words, drawings or images, including holograms, or a combination thereof, represented in one or more colors;

2. Being capable of distinguishing goods or services of the mark owner from those of other subjects.

Article 73.- Signs not protected as marks

The following signs shall not be protected as marks:

1. Signs identical with or confusingly similar to national flags or national emblems;

2. Signs identical with or confusingly similar to emblems, flags, armorial bearings, abbreviated names or full names of Vietnamese state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations or socio-professional organizations or international organizations, unless permitted by such agencies or organizations;

3. Signs identical with or confusingly similar to real names, alias, pseudonyms or images of leaders, national heroes or famous personalities of Vietnam or foreign countries;

4. Signs identical with or confusingly similar to certification seals, check seals or warranty seals of international organizations which require that their signs must not be used, unless such seals are registered as certification marks by those organizations;

5. Signs which cause misleading or confusion or deceive consumers as to the origin, properties, intended utilities, quality, value or other characteristics of goods or services.

Article 74.- Distinctiveness of marks

1. A mark shall be considered distinctive if it consists of one or several easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination, and does not fall into the cases specified in Clause 2 of this Article.

2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

a/ Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such signs have been widely used and recognized as a mark;

b/ Conventional signs or symbols, pictures or common names in any language of goods or services that have been widely and regularly used and known to many people;

c/ Signs indicating time, place and method of production, category, quantity, quality, properties, ingredients, intended utility, value or other characteristics, which is descriptive of goods or services, except where such signs have acquired distinctiveness through use before the filing of mark registration applications;

d/ Signs describing the legal status and business field of business entities;

e/ Signs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as collective marks or certification marks as provided for in this Law;

f/ Signs other than integrated marks which are identical with or confusingly similar to registered marks of identical or similar goods or services on the basis of registration applications with earlier filing dates or priority dates, as applicable, including mark registration applications filed under treaties to which the Socialist Republic of Vietnam is a contracting party;

g/ Signs identical with or confusingly similar to another person’s mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;

h/ Signs identical with or confusingly similar to another person’s mark which has been registered for identical or similar goods or services, the registration certificate of which has been invalidated for no more than 5 years, except where the ground for such invalidation is non-use of the mark according to Point d, Clause 1, Article 95 of this Law;

i/ Signs identical with or confusingly similar to another person’s mark recognized as a well-known mark which has been registered for goods or services which are identical with or similar to those bearing such well-known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well-known mark or the mark registration is aimed at taking advantage of the reputation of the well-known mark;

j/ Signs identical with or similar to another person’s trade name currently in use if the use of such signs may cause confusion to consumers as to the origin of goods or services;

k/ Signs identical with or similar to a geographical indication being protected if the use of such signs may mislead consumers as to the geographical origin of goods;

l/ Signs identical with, containing or being translated or transcribed from geographical indications being protected for wines or spirits if such signs have been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;

m/ Signs identical with or insignificantly different from another person's industrial design which has been protected on the basis of an industrial design registration application with the filing date or priority date earlier than that of the mark registration application.

Article 75.- Criteria for evaluation of well-known marks

The following criteria shall be taken into account when a mark is considered well-known:

1. The number of involved consumers who have been aware of the mark through purchase or use of goods or services bearing the mark or through advertising;

2. Territorial area in which goods or services bearing the mark are circulated;

3. Turnover of the sale of goods or provision of services bearing the mark or the quantity of goods sold or services provided;

4. Duration of continuous use of the mark;

5. Wide reputation of goods or services bearing the mark;

6. Number of countries protecting the mark;

7. Number of countries recognizing the mark as a well-known mark;

8. Assignment price, licensing price, or investment capital contribution value of the mark.

Section 5. PROTECTION CONDITIONS FOR TRADE NAMES

Article 76.- General conditions for trade names eligible for protection

A trade name shall be protected when it is capable of distinguishing the business entity bearing it from other business entities operating in the same business field and locality.

Article 77.- Subject matters not protected as trade names

Names of state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations or other entities that are not involved in business activities shall not be protected as trade names.

Article 78.- Distinctiveness of trade names

A trade name shall be considered distinctive when it satisfies the following conditions:

1. Consisting of a proper name, except where it has been widely known through use;

2. Being not identical with or confusingly similar to a trade name having been used earlier by another person in the same business field and locality;

3.Being not identical with or confusingly similar to another person's mark or a geographical indication having been protected before the date it is used.

Section 6. PROTECTION CONDITIONS FOR GEOGRAPHICAL INDICATIONS

Article 79.- General conditions for geographical indications eligible for protection

A geographical indication shall be protected when it satisfies the following conditions:

1. The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication;

2. The product bearing the geographical indication has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication.

Article 80.- Subject matters not protected as geographical indications

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

1. Names or indications which have become generic names of goods in Vietnam;

2. Geographical indications of foreign countries where they are not or no longer protected or no longer used;

3. Geographical indications identical with or similar to a protected mark, where the use of such geographical indications is likely to cause a confusion as to the origin of products;

4. Geographical indications which mislead consumers as to the true geographical origin of products bearing such geographical indications.

Article 81.- Reputation, quality and characteristics of products bearing geographical indications

1. Reputation of products bearing a geographical indication shall be determined on the basis of consumers' trust in such products through the extent of their being widely known to and selected by consumers.

2. Quality and characteristics of products bearing a geographical indication shall be defined by one or several qualitative, quantitative or physically, chemically, microbiologically perceptible criteria which can be tested by technical means or experts with appropriate testing methods.

Article 82.- Geographical conditions relevant to geographical indications

1. Geographical conditions relevant to a geographical indication mean natural and human factors decisive to reputation, quality and characteristics of products bearing such geographical indication.

2. Natural factors include climatic, hydrological, geological, topographical and ecological factors and other natural conditions.

3. Human factors include skills and expertise of producers, and traditional production processes of localities.

Article 83.- Geographical areas bearing geographical indications

Geographical areas bearing geographical indications shall have their boundaries accurately determined in words and maps.

Section 7. PROTECTION CONDITIONS FOR BUSINESS SECRETS

Article 84.- General conditions for business secrets eligible for protection

A business secret shall be protected when it satisfies the following conditions:

1. Being neither common knowledge nor easily obtained;

2. Being capable, when being used in business activities, of rendering advantages to its holder over those who do not hold or use it;

3. Being kept secret by its owner with necessary measures so that it shall neither be disclosed nor easily accessible.

Article 85.- Subject matters not protected as business secrets

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

1. Personal identification secrets;

2. State management secrets;

3. National defense and security secrets;

4. Other confidential information irrelevant to business.

Chapter VIII
ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS TO INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT-DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS

Section 1. REGISTRATION OF INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT-DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS

Article 86.- The right to register inventions, industrial designs and layout-designs

1. The following organizations and individuals shall have the right to register inventions, industrial designs and layout-designs:

a/ Authors who have created inventions, industrial designs or layout-designs with their own efforts and expenses;

b/ Organizations or individuals who have supplied funds and material facilities to authors in the form of job assignment or hiring unless otherwise agreed by the involved parties whose agreements are not contrary to the provisions of Clause 2 of this Article.

2. The Government shall provide for the right to register inventions, industrial designs and layout-designs created by using material and technical facilities and funds from the state budget.

3. Where more than one organizations or individuals have jointly created or invested in the creation of an invention, industrial design or layout-design, these organizations or individuals shall all have the registration right, which shall only be exercised with their consensus.

4. A person who has the registration right as provided in this Article may assign that right to other organizations or individuals in the form of a written contract, bequeathal or inheritance in according to the provisions of law, even where a registration application has been filed.

Article 87.- Right to register marks

1. Organizations or individuals shall have the right to register marks to be used for goods they produce or services they provide.

2. Organizations or individuals lawfully trading in products produced by others shall have the right to register marks for such products, provided that the producers neither use such marks for their products nor object to such registration.

3. Collective organizations lawfully established shall have the right to register collective marks to be used by their members under the regulations on use of collective marks. For signs indicating geographical origins of goods or services, organizations having the right to register them shall be collective organizations of organizations or individuals engaged in production or trading in relevant localities.

4. Organizations with the function of controlling and certifying quality, properties, origin or other relevant criteria of goods or services shall have the right to register certification marks, provided that they are not engaged in production or trading of such goods or services.

5. Two or more organizations or individuals shall have the right to jointly register a mark in order to become its co-owners on the following conditions:

a/ Such mark is used in the names of all co-owners or used for goods or services which are produced or dealt in with the participation of all co-owners;

b/ The use of such mark causes no confusion to consumers as to the origin of goods or services.

6. Persons having the registration right defined in Clauses 1, 2, 3, 4 and 5 of this Article, including those having filed registration applications, may assign the registration right to other organizations or individuals in the form of written contracts, bequeathal or inheritance according to law, provided that the assigned organizations or individuals satisfy the respective conditions on the persons having the registration right.

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

Article 88.- Right to register geographical indications

The right to register Vietnamese geographical indications belongs to the State.

The State allows organizations and individuals producing products bearing geographical indications, collective organizations representing such organizations or individuals or administrative management agencies of localities to which such geographical indications pertain to exercise the right to register such geographical indications. Persons who exercise the right to register geographical indications shall not become owners of such geographical indications.

Article 89.- Modes of filing registration applications for establishment of industrial property rights

1. Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam and foreign organizations or individuals having production or business establishments in Vietnam shall file applications for registration of establishment of industrial property rights either directly or through their lawful representatives in Vietnam.

2. Foreign individuals not permanently residing in Vietnam, foreign organizations or individuals having no production or business establishments in Vietnam shall file applications for registration of establishment of industrial property rights through their lawful representatives in Vietnam.

Article 90.- The first-to-file principle

1. Where two or more applications are filed by many different parties for registration of the same invention, or for registration of industrial designs identical with or insignificantly different from each other, or for registration of marks identical with or confusingly similar to each other, for identical or similar goods or services, the protection title may only be granted to the valid application with the earliest priority or filing date among applications that satisfy all the conditions for the grant of protection titles.

2. Where there are two or more applications satisfying all the conditions for the grant of protection titles and having the same earliest priority or filing date, the protection title may only be granted to a single application out of these applications under an agreement by all applicants. Without such an agreement, all these applications shall be refused for the grant of a protection title.

Article 91.- Principle of priority

1. An applicant for registration of an invention, an industrial design or a mark may claim priority on the basis of the first application for registration of protection of the same subject matter if the following conditions are fully satisfied:

a/ The first application has been filed in Vietnam or in a country being a contracting party to a treaty containing provisions on priority right to which the Socialist Republic of Vietnam is also a contracting party, or in a country having agreed with Vietnam to apply such provisions;

b/ The applicant is a citizen of Vietnam or of a country defined at Point a of this Clause, who resides or has a production or business establishment in Vietnam or in a country defined at Point a of this Clause;

c/ The claim for the priority right is clearly stated in the application and a copy of the first application certified by the receiving office is enclosed;

d/ The application is filed within the time limit provided for in a treaty to which Vietnam is contracting party.

2. In an invention, industrial design or mark registration application, the applicant may claim the priority right on the basis of different earlier filed applications, provided that the corresponding contents of such earlier applications and the application are indicated.

3. An industrial property registration application enjoying priority right shall bear the priority date being the filing date of the first application.

Article 92.- Protection titles

1. Protection titles shall recognize owners of inventions, industrial designs, layout-designs or marks (hereinafter referred to as protection title owners); authors of inventions, industrial designs or layout-designs; subject matters, scope and term of protection.

2. Protection titles of geographical indications shall record organizations managing such geographical indications, organizations or individuals having the right to use such geographical indications, protected geographical indications, particular characteristics of products bearing such geographical indications, particular characteristics of geographical conditions and geographical areas bearing such geographical indications.

3. Protections titles include invention patent, utility solution patent, industrial design patent, certificate of registered semiconductor integrated circuit layout-design, certificate of registered mark and certificate of registered geographical indication.

Article 93.- Validity of protection titles

1. Protection titles shall be valid throughout the Vietnamese territory.

2. Invention patents shall each have a validity starting from the grant date and expiring at the end of 20 years after the filing date.

3. Utility solution patents shall have a validity starting from the grant date and expiring at the end of 10 years after the filing date.

4. Industrial design patents shall have a validity starting from the grant date and expiring at the end of 5 years after the filing date and may be renewed for two consecutive terms, each of 5 years.

5. Certificates of registered semiconductor integrated circuit layout-designs shall each have a validity starting from the grant date and expiring at the earliest date among the following:

a/ The end of 10 years after the filing date;

b/ The end of 10 years after the date the layout-designs were first commercially exploited anywhere in the world by persons having the registration right or their licensees;

c/ The end of 15 years after the date of creation of the layout-designs.

6. Certificates of registered marks shall have a validity starting from the grant date and expiring at the end of 10 years after the filing date and may be renewed for many consecutive terms, each of 10 years.

7. Certificates of registered geographical indications shall have an indefinite validity starting from the grant date.

Article 94.- Maintenance and prolongation of validity of protection titles

1. In order to maintain the validity of an invention patent or a utility solution patent, its owner shall have to pay validity maintenance fee.

2. In order to have the validity of an industrial design patent or a certificate of registered mark prolonged, its owner shall have to pay validity prolongation fee.

3. Fee rates and procedures for maintaining or prolonging validity of protection titles shall be provided for by the Government.

Article 95.- Termination of validity of protection titles

1. The validity of a protection title shall be terminated in the following cases:

a/ Its owner fails to pay the validity maintenance or prolongation fee as prescribed;

b/ Its owner declares to relinquish the industrial property rights;

c/ Its owner no longer exists or the owner of a certificate of registered mark is no longer engaged in business activities without any lawful heir;

d/ The mark has not been used by its owner or his/her licensee without justifiable reasons for 5 consecutive years prior to a request for termination of validity, except where the use is commenced or resumed at least 3 months before the request for termination;

e/ The owner of a certificate of registered collective mark fails to supervise or ineffectively supervises the implementation of the regulation on use of collective marks;

f/ The owner of a certificate of registered certification mark violates the regulation on use of certification marks or fails to supervise or ineffectively supervises the implementation of such regulation;

g/ The geographical conditions decisive to reputation, quality or special characteristics of products bearing a geographical indication have changed resulting in the loss of such reputation, quality or characteristics of products.

2. Where the owner of an invention protection title fails to pay the validity maintenance fee before the set time limit, the validity of such protection title shall, upon the expiration of such time limit, automatically terminate as from the first day of the first valid year for which the validity maintenance fee has not been paid. The state management agency in charge of industrial property rights shall record such termination in the National Register of Industrial Property and publish it in the Official Gazette of Industrial Property.

3. Where the owner of a protection title declares to relinquish industrial property rights provided for at Point b, Clause 1 of this Article, the state management agency in charge of industrial property rights shall decide to terminate the validity of such protection title from the date of receipt of the owner's declaration;

4. Organizations and individuals shall have the right to request the state management agency in charge of industrial property rights to terminate the validity of protection titles in cases specified at Points c, d, e, f and g, Clause 1 of this Article, provided that they have paid fees and charges.
Based on the result of the examination of requests for termination of validity of protection titles and involved parties' opinions, the state management agency in charge of industrial property rights shall issue decisions on termination of validity of protection titles or notify the refusal to terminate the validity of protection titles.

5. The provisions of Clauses 1, 3 and 4 of this Article shall also apply to the termination of validity of international registrations of marks.

Article 96.- Invalidation of protection titles

1. A protection title shall be entirely invalidated in the following cases:

a/ The registration applicant has neither had nor been assigned the right to register an invention, industrial design, layout-design or mark;

b/ The subject matter of industrial property fails to satisfy the protection conditions at the time the protection title is granted.

2. A protection title shall be partly invalidated when that part fails to satisfy the protection conditions.

3. Organizations and individuals may request the state management agency in charge of industrial property rights to invalidate protection titles in the cases specified in Clauses 1 and 2 of this Article, provided that they pay fees and charges.

The statute of limitations for exercising the right to request invalidation of a protection title shall be its whole term of protection. For marks, such statute of limitations shall be 5 years from the grant date, except where the protection title has been granted due to the applicant's dishonesty.

4. Based on the result of the examination of request for invalidation of a protection title and involved parties' opinions, the state management agency in charge of industrial property rights shall issue a decision on entire or partial invalidation of the protection title or notify the refusal to invalidate it.

5. The provisions of Clauses 1, 2, 3 and 4 of this Article shall also apply to the invalidation of international registrations of marks.

Article 97.- Amendments to protection titles

1. The owner of a protection title may request the state management agency in charge of industrial property rights to make amendments to the following information in such protection title, provided that the prescribed fees and charge are paid:

a/ Modifications, error corrections in relation to the name and address of the author or the protection title owner;

b/ Amendments to the description of particular characteristics, quality or geographical area bearing a geographical indication; amendments to the regulation on use of collective marks or the regulation on use of a certification mark.

2. At the request of the owner of a protection title, the state management agency in charge of industrial property rights shall have to correct errors caused at its fault in such protection title. In this case, the protection title owner is not liable to pay fees and charges.

3. The owner of a protection title may request the state management agency in charge of industrial property rights to narrow the scope of industrial property rights. In this case, the corresponding industrial property registration application shall be substantively re-examined and the requester shall pay the fee for substantive examination.

Article 98.- National register of industrial property

1. The national register of industrial property is a document recording the establishment, change and transfer of industrial property rights to inventions, industrial designs, layout-designs, marks and geographical indications under this Law.

2. Decisions on grant of protection titles, principal contents of protection titles and decisions on amendment, termination of validity or invalidation of protection titles, decisions on registration of industrial property right transfer contracts shall all be recorded in the national register of industrial property.

3. The national register of industrial property shall be compiled and kept by the state management agency in charge of industrial property rights.

Article 99.- Publication of decisions relating to protection titles

Decisions on grant, termination of validity, invalidation or amendment of protection titles for industrial property rights shall be published by the state management agency in charge of industrial property rights in the Official Gazette of Industrial Property within 60 days as from the date of issuance.

Section 2. INDUSTRIAL PROPERTY REGISTRATION APPLICATIONS

Article 100.- General requirements on industrial property registration applications

1. An industrial property registration application comprises the following documents:

a/ A declaration for registration, made according to a set form;

b/ Documents, samples and information identifying the industrial property subject matter registered for protection as specified in Articles 102 thru 106 of this Law;

c/ Power of attorney, if the application is filed through a representative;

d/ Documents evidencing the registration right, if such right is acquired by the applicant from another person;

e/ Documents evidencing the priority right, if such right is claimed;

f/ Vouchers of payment of fees and charges.

2. Industrial property registration applications and papers for transaction between the applicants and the state management agency in charge of industrial property rights shall be made in Vietnamese, except for the following documents, which can be made in another language but shall be translated into Vietnamese at the request of the state management agency in charge of industrial property rights:

a/ Power of attorney;

b/ Documents evidencing the registration right;

c/ Documents evidencing the priority right;

d/ Other documents supporting the applications.

3. Documents evidencing the priority right in an industrial property registration application include:

a/ A copy of first application(s) certified by the receiving office;

b/ Deed of assignment of priority right if such right is acquired from another person.

Article 101.- The requirement on the uniformity of industrial property registration applications

1. Each industrial property registration application shall request the grant of only one protection title for a single industrial property subject matter, except for the cases specified in Clauses 2, 3 and 4 of this Article.

2. Each registration application may request the grant of one invention patent or one utility solution patent for a group of inventions that are technically linked to form a single common inventive idea.

3. Each registration application may request the grant of one industrial design patent for several industrial designs in the following cases:

a/ Industrial designs of a set of products consist of numerous items expressing a single common inventive idea and used together or for a common purpose;

b/ An industrial design is accompanied by one or more variants, i.e., variations of such industrial design that express a single common inventive idea and that are not significantly different from such industrial design.

4. Each registration application may request the grant of one certificate of registered mark for one mark to be used for one or more different goods or services.

Article 102.- Requirements on invention registration applications

1. Documents identifying an invention registered for protection in an invention registration application shall include a description of the invention and an abstract of the invention. The invention description consists of the description section and the scope of protection of the invention.

2. The description of invention must satisfy the following conditions:

a/ Fully and clearly disclosing the nature of the invention to the extent that such invention may be realized by a person with average knowledge in the art;

b/ Briefly explaining the accompanied drawings, if it is required to further clarify the nature of the invention;

c/ Clarifying the novelty, inventive step and susceptibility of industrial application of the invention.

3. The scope of protection of inventions shall be expressed in the form of a combination of technical specifications which are necessary and sufficient to identify the scope of the rights to such inventions, and compatible with the description of inventions and drawings.

4. Abstracts of inventions must disclose principal features of nature of such inventions.

Article 103.- Requirements on industrial design registration applications

1. Documents identifying an industrial design registered for protection in an industrial design registration application include a description and a set of photos or drawings of such industrial design. The industrial design description consists of a section of description and a scope of protection of such industrial design.

2. The section of description of an industrial design must satisfy the following conditions:

a/ Fully disclosing all features expressing the nature of the industrial design and clearly identifying features which are new, different from the least different known industrial design, and consistent with the set of photos or drawings;

b/ Where the industrial design registration application consists of variants, the section of description must fully show these variants and clearly identify distinctions between the principal variant and other variants;

c/ Where the industrial design stated in the registration application is that of a set of products, the section of description must fully show features of each product of the set.

3. The scope of protection of industrial designs must clearly define features which need to be protected, including features which are new and different from similar known industrial designs.

4. The set of photos and drawings must fully define features of the industrial design.

Article 104.- Requirements on layout-design registration applications

Documents, samples and information identifying a layout-design registered for protection in a layout-design registration application include:

1. Drawings and photos of the layout-design;

2. Information on functions and structure of semiconductor integrated circuits produced under the layout-design;

3. Samples of semiconductor integrated circuits produced under the layout-design, if such layout-design has been commercially exploited.

Article 105.- Requirements on mark registration applications

1. Documents, samples, information identifying a mark registered for protection in a mark registration application include:

a/ A sample of the mark and a list of goods or services bearing the mark;

b/ Regulation on use of collective marks or regulation on use of certification marks.

2. The sample of the mark must be described in order to clarify elements of the mark and the comprehensive meaning of the mark, if any; where the mark consists of words or phrases of hieroglyphic languages, such words or phrases must be transcribed; where the mark consists of words or phrases in foreign languages, such words or phrases must be translated into Vietnamese.

3. Goods or services listed in a mark registration application must be classified into appropriate groups in accordance with the Classification List under the Nice Agreement on International Classification of Goods and Services for the purpose of mark registration, and published by the state management agency in charge of industrial property rights.

4. The regulation on use of collective marks consists of the following principal contents:

a/ Name, address, grounds of establishment and operations of the collective organization being the owner of the mark;

b/ Criteria for becoming a member of the collective organization;

c/ List of organizations and individuals permitted to use the mark;

d/ Conditions for use of the mark;

e/ Measures for handling acts violating the regulation on use of marks.

5. The regulation on use of certification marks consists of the following principal contents:

a/ The organization or individual being the mark owner;

b/ Conditions for using the mark;

c/ Characteristics of goods or services certified by the mark;

d/ Methods of evaluating characteristics of goods or services and methods of controlling the use of the mark;

e/ Expenses to be paid by the mark user for the certification and protection of the mark, if any.

Article 106.- Requirements on geographical indication registration applications

1. Documents, samples and information identifying a geographical indication registered for protection in a geographical indication registration application include:

a/ The name or sign being the geographical indication;

b/ The product bearing the geographical indication;

c/ The description of peculiar characteristics and quality, or reputation of the product bearing the geographical indication and particular elements of natural conditions decisive to the peculiar characteristics and quality, or reputation of the product (hereinafter referred to as the description of peculiar characteristics);

d/ The map of the geographical area bearing the geographical indication;

e/ Documents evidencing that the geographical indication is under protection in the country of origin in case of a foreign geographical origin;

2. The description of peculiar characteristics must have the following principal contents:

a/ Description of the relevant product, including raw materials, and physical, chemical, microbiological and perceptible properties of the product;

b/ Method of identification of the geographical area bearing the geographical indication;

c/ Evidence proving that the product originates from such geographical area, with the respective meaning provided for in Article 79 of this Law;

d/ Description of local and stable methods of production and processing;

e/ Information on relationship between the peculiar characteristics and quality, or reputation of the product and the geographical conditions as provided for in Article 79 of this Law;

f/ Information on the mechanism of self-control of the peculiar characteristics or quality of the product.

Article 107.- Authorized representation in industrial property rights-related procedures

1. The authorization for carrying out procedures related to the establishment, maintenance, prolongation, amendment, termination and invalidation of protection titles must be made in writing in the form of a power of attorney.

2. A power of attorney must have the following principal contents:

a/ Full name and address of the principal and the attorney;

b/ Scope of authorization;

c/ Valid term of authorization;

d/ Date of making the power of attorney;

e/ Signature and seal (if any) of the principal.

3. A power of attorney without any valid term shall be considered indefinitely valid and shall have its validity terminated only when the principal so declares.

Section 3. PROCEDURES FOR PROCESSING INDUSTRIAL PROPERTY REGISTRATION APPLICATIONS AND GRANTING PROTECTION TITLES

Article 108.- Receipt of industrial property registration applications, filing date

1. An industrial property registration application shall only be received by the concerned state management agency in charge of industrial property rights if it consists of at least the following documents and information:

a/ A declaration for registration of an invention, industrial design, layout-design, mark or geographical indication, which includes sufficient information to identify the applicant and a sample of mark, list of goods or services bearing the mark for a mark registration application;

b/ A description, including the scope of protection, for an invention registration application; a set of photos and drawings and a description, for an industrial design registration application; a description of peculiar characteristics of a product bearing geographical indication, for a geographical indication registration application;

c/ Voucher of payment of filing fee.

2. The filing date shall be the date on which the application is received by the concerned state management agency in charge of industrial property rights or the international filing date in case of applications filed under international treaties.

Article 109.- Formal examination of industrial property registration applications

1. Industrial property registration applications shall be subject to formal examination for evaluating their validity.

2. An industrial property registration application shall be considered invalid in the following cases:

a/ It does not fulfill the formal requirements;

b/ The subject matter stated in the application is ineligible for protection;

c/ The applicant does not have the registration right, including where the registration right belongs to more than one organizations or individuals but one or several of them do not agree with the filing;

d/ It is filed in contravention of regulations on the filing mode provided for in Article 89 of this Law;

e/ The applicant fails to pay fees and charges.

3. For industrial property registration applications falling into the cases specified in Clause 2 of this Article, the state management agency in charge of industrial property rights shall carry out the following procedures:

a/ Issuing a notice of intended refusal to accept valid applications, clearly stating reasons and setting a time limit for the applicant to correct errors or to object such intended refusal;

b/ Issuing a notice of refusal to accept valid applications if the applicant fails to correct errors, improperly corrects errors or fails to make a justifiable objection to such intended refusal mentioned at Point a of this Clause;

c/ Issuing a notice of refusal to grant a certificate of registered semiconductor integrated circuit layout-design in case of an integrated circuit registration application;

d/ Carrying out procedures specified in Clause 4 of this Article if the applicant properly corrects errors or makes justifiable objection to the intended refusal to accept valid application mentioned at Point a of this Clause.

4. For industrial property registration applications not falling into the cases specified in Clause 2 of this Article, or in the cases specified at Point d, Clause 3 of this Article, the state management agency in charge of industrial property rights shall issue notices of acceptance of valid applications or carry out procedures for granting protection titles and recording them in the national register of industrial property as provided for in Article 118 of this Law, for layout-design registration applications.

5. Mark registration applications rejected according to the provisions of Clause 3 of this Article shall be considered having not been filed, except where they serve as grounds for claims for priority right.

Article 110.- Publication of industrial property registration applications

1. Industrial property registration applications which have been accepted as being valid by the state management agency in charge of industrial property rights shall be published in the Official Gazette of Industrial Property according to the provisions of this Article.

2. An invention registration application shall be published in the 19th month as from the filing date or the priority date, as applicable, or at an earlier time at the request of the applicant.

3. An industrial design registration application, a mark registration application or a geographical indication registration application shall be published within 2 months as from the date such application is accepted as being valid.

4. A layout-design registration application shall be published by mode of direct access at the concerned state management agency in charge of industrial property rights, provided that no reproduction is permitted; for confidential information in an application, such access shall be permitted only to competent authorities and involved parties in the process of carrying out procedures for invalidating protection titles or the process of carrying out procedures for handling right infringements.

Principal information on a layout-design registration application and the protection title for a layout-design shall be published within 2 months as from the grant date of such protection title.

Article 111.- Confidentiality of invention registration applications, industrial design registration applications before publication thereof

1. Before invention registration applications or industrial design registration applications are published in the Official Gazette of Industrial Property, the state management agency in charge of industrial property rights shall have to keep confidential information therein.

2. Cadres and public employees of the state management agency in charge of industrial property rights who disclose information in invention registration applications or industrial design registration applications shall be disciplined; if the information disclosure causes damage to applicants, they must pay compensations therefor according to the provisions of law.

Article 112.- Third party’s opinions on the grant of protection titles

As from the date an industrial property registration application is published in the Official Gazette of Industrial Property till prior to the date of issuance of a decision on grant of a protection title, any

third party shall have the right to express opinions to the concerned state management agency in charge of industrial property rights on the grant or refusal to grant a protection title in respect of such application. Such opinions must be made in writing and be accompanied by documents or must quote the source of information.

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

1. Within 42 months after the filing date or the priority date, as applicable, an applicant or any third party may request the concerned state management agency in charge of industrial property rights to substantively examine the application, provided that the substantive examination fee is paid.

2. The time limit for making request for substantive examination of an invention registration application involving a request for a utility solution patent shall be 36 months counting from the filing date or the priority date, as applicable.

3. Where no request for substantive examination is filed within the time limit specified in Clauses 1 and 2 of this Article, the invention registration application shall be considered having been withdrawn at the expiration of that time limit.

Article 114.- Substantive examination of industrial property registration applications

1. The following industrial property registration applications shall be substantively examined for evaluation of the eligibility for grant of protection titles for subject matters stated in such applications under protection conditions and for determination of the respective scope of protection:

a/ Invention registration applications which have already been accepted as being valid and involve requests for substantive examination filed according to regulations;

b/ Industrial design registration applications, mark registration applications or geographical indication registration applications which have been accepted as being valid.

2. Layout-design registration applications shall not be substantively examined.

Article 115.- Amendment, supplementation, division and conversion of industrial property registration applications

1. Before the concerned state management agency in charge of industrial property rights notifies a refusal or decides to grant a protection title, the applicant shall have the following rights:

a/ To amend or supplement the application;

b/ To divide the application;

c/ To request the recording of changes in name or address of the applicant;

d/ To request the recording of change of the applicant as a result of application transfer under a contract, bequeathal or inheritance, or under a decision of a competent agency;

e/ To convert an invention registration application involving a request for an invention patent into an invention registration application involving a request for a utility solution patent and vice versa.

2. The requesters for completion of procedures specified in Clause 1 of this Article shall have to pay fees and charges.

3. Any amendment or supplement to an industrial property registration application must not expand the scope of the subject matter already disclosed or stated in such application and must not change the

nature of the subject matter subject to registration stated in the application and must ensure the uniformity of the application.

4. In case of division of an application, the filing date of the divided application shall be determined to be the filing date of the original application.

Article 116.- Withdrawal of industrial property registration applications

1. Before the concerned state management agency in charge of industrial property rights decides or refuses to grant a protection title, the applicant shall have the right to make written declaration on the withdrawal of the industrial property registration application in his or her own name or through an industrial property representation service organization, provided that the power of attorney clearly states the authorization for application withdrawal.

2. As from the time the applicant declares the withdrawal of the application, all further procedures related to such application shall be stopped; fee and charge amounts already paid in relation to the procedures which have not yet been commenced shall be refunded to the applicant at his/her request.

3. All invention or industrial design registration applications which have been withdrawn or are considered having been withdrawn before their publication and all mark registration applications which have been withdrawn shall be considered having never been filed, except where they serve as grounds for claims for priority right.

Article 117.- Refusal to grant protection titles

1. The grant of a protection title for an invention, industrial design, mark or geographical indication registration application shall be refused in the following cases:

a/ There are grounds to affirm that the subject matter stated in the application does not fully satisfy the protection conditions;

b/ The application satisfies the conditions for the grant of a protection title but is not with the earliest filing date or priority date as in the case specified in Clause 1, Article 90 of this Law;

c/ The application falls into a case specified in Clause 2, Article 90 of this Law but fails to get the consensus of all applicants.

2. The grant of a protection title for a layout-design registration application that does not fulfill the formal requirements specified in Article 109 of this Law shall be refused.

3. Where an industrial property registration application falls into the cases specified in Clauses 1 and 2 of this Article, the concerned state management agency in charge of industrial property rights shall carry out the following procedures:

a/ Notifying an intended refusal to grant a protection title, clearly stating the reasons therefor and setting a time limit for the applicant to make an objection to such intended refusal;

b/ Notifying the refusal to grant a protection title if the applicant makes no objection or makes unjustifiable objection to such intended refusal mentioned at Point a of this Clause;

c/ Granting a protection title and recording it in the national register of industrial property according to the provisions of Article 118 of this Law if the applicant has made a justifiable objection to the intended refusal mentioned at Point a of this Clause.

4. Where there appears an objection to the intended grant of a protection title, the relevant industrial property registration application shall be re-examined with regard to the matters against which the objection is made.

Article 118.- Grant of protection titles, entry into the register

Where an industrial property registration application does not fall into the cases of refusal to grant protection titles specified in Clauses 1 and 2 and at Point b, Clause 3, Article 117 of this Law and the applicant has paid fee, the state management agency in charge of industrial property rights shall decide to grant a protection title and enter it in the national register of industrial property.

Article 119.- Time limit for processing industrial property registration applications

1. An industrial property registration application shall have its form examined within one month from the filing date.

2. An industrial property registration application shall be substantively examined within the following time limits:

a/ For an invention, 12 months from the date of its publication if a request for substantive examination is filed before the date of application publication, or from the date of receipt of a request for substantive examination if such request is filed after the date of application publication;

b/ For an industrial design, a mark or a geographical indication, 6 months from the date of publication of the application.

3. The time limit for re-examination of an industrial property registration application shall be equal to two thirds of the time limit for the initial examination, and may, in complicated cases, be prolonged but must not exceed the time limit for the initial examination.

4. The duration for amendment or supplementation of applications shall not be counted into the time limits specified in Clauses 1, 2 and 3 of this Article.

Section 4. INTERNATIONAL APPLICATIONS AND PROCESSING THEREOF

Article 120.- International applications and processing thereof

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

2. International applications and processing thereof shall comply with the relevant treaties.

3. The Government shall guide the implementation of the relevant treaties' provisions on international applications, orders and procedures for processing thereof in compliance with the principles laid down in this Chapter.

Chapter IX
OWNERS AND CONTENTS OF, AND LIMITATIONS ON INDUSTRIAL PROPERTY RIGHTS

Section 1. OWNERS AND CONTENTS OF INDUSTRIAL PROPERTY RIGHTS

Article 121.- Owners of industrial property objects

1. Owners of inventions, industrial designs or layout-designs mean organizations or individuals that are granted by the competent agency protection titles for respective industrial property objects.

Owners of marks mean organizations or individuals that are granted by the competent agency protection titles for such marks or have internationally registered marks as recognized by the competent agency or have well-known marks.

2. Owners of trade names mean organizations or individuals that lawfully use such trade names in business activities.

3. Owners of business secrets mean organizations or individuals that have lawfully acquired such business secrets and keep them secret. A business secret acquired by an employee or a performer of an assigned task during the performance of the hired job or assigned task shall be owned by the employer or the task assignor, unless otherwise agreed by the parties.

4. The owner of Vietnam's geographical indications is the State.

The State shall grant the right to use geographical indications to organizations or individuals that turn out products bearing such geographical indications in relevant localities and put such products on the market. The State shall directly exercise the right to manage geographical indications or grant that right to organizations representing the interests of all organizations or individuals granted with the right to use geographical indications.

Article 122.- Authors of inventions, industrial designs or layout-designs and their rights

1. Authors of inventions, industrial designs or layout-designs mean persons who have personally created such industrial property objects. Where two or more persons have jointly created industrial property objects, they shall be co-authors.

2. Moral rights of authors of inventions, industrial designs or layout-designs shall include the following rights:

a/ To be named as authors in invention patents, utility solution patents, industrial design patents or certificates of registered semiconductor integrated circuit layout-designs;

b/ To be acknowledged as authors in documents in which inventions, industrial designs or layout-designs are published or introduced.

3. Economic rights of authors of inventions, industrial designs or layout-designs are the rights to receive remunerations as provided for in Article 135 of this Law.

Article 123.- Rights of owners of industrial property objects

1. Owners of industrial property objects shall have the following economic rights:

a/ To use or authorize others to use industrial property objects according to the provisions of Article 124 and Chapter X of this Law;

b/ To prevent others from using industrial property objects according to the provisions of Article 125 of this Law;

c/ To dispose of industrial property objects according to the provisions of Chapter X of this Law.

2. Organizations and individuals that are granted by the State the right to use or the right to manage geographical indications according to the provisions of Clause 4, Article 121 of this Law shall have the following rights:

a/ Organizations which are granted the right to manage geographical indications may permit other persons to use such geographical indications according to the provisions of Point a, Clause 1 of this Article.

b/ Organizations and individuals that are granted the right to use or organizations which are granted the right to manage geographical indications may prevent other persons from using such geographical indications according to the provisions of Point b, Clause 1 of this Article.

Article 124.- Use of industrial property objects

1. Use of an invention means the performance of the following acts:

a/ Manufacturing the protected product;

b/ Applying the protected process;

c/ Exploiting utilities of the protected product or the product manufactured under the protected process;

d/ Circulating, advertising, offering, stocking for circulation the product mentioned at Point c of this Clause;

e/ Importing the product mentioned at Point c of this Clause.

2. Use of an industrial design means the performance of the following acts:

a/ Manufacturing products with appearance embodying the protected industrial design;

b/ Circulating, advertising, offering and stocking for circulation products mentioned at Point a of this Clause;

c/ Importing products mentioned at Point a of this Clause.

3. Use of a layout-design means the performance of the following acts:

a/ Reproducing the layout-design; manufacturing semiconductor integrated circuits under the protected layout-design;

b/ Selling, leasing, advertising, offering or stocking copies of the protected layout-design, semi-conductor integrated circuits manufactured under the protected layout-design or articles containing such semi-conductor integrated circuits;

c/ Importing copies of the protected layout-design, semi-conductor integrated circuits manufactured under the protected layout-design or articles containing such semi-conductor integrated circuits.

4. Use of a business secret means the performance of the following acts:

a/ Applying the business secret to manufacture of products, provision of services or trade in goods;

b/ Selling, advertising for sale, stocking for sale or importing products manufactured with the application of the business secret;

5. Use of a mark means the performance of the following acts:

a/ Affixing the protected mark on goods, goods packages, means of business, means of service provision, transaction documents in business activities;

b/ Circulating, offering, advertising for sale or stocking for sale goods bearing the protected mark;

c/ Importing goods or services bearing the protected mark.

6. Use of a trade name means the performance of acts for commercial purposes by using it to name oneself in business activities, expressing it in transaction documents, signboards, products, goods, goods packages and means of service provision or advertisement.

7. Use of a geographical indication means the performance of the following acts:

a/ Affixing the protected geographical indication on goods or goods packages, means of business and transaction documents in business activities;

b/ Circulating, offering, advertising for sale or stocking for sale goods bearing the protected geographical indication;

c/ Importing goods bearing the protected geographical indication.

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

1. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications may prevent others from using such industrial property objects unless such use falls into the cases specified in Clauses 2 and 3 of this Article.

2. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall not have the right to prevent others from performing the following acts:

a/ Using inventions, industrial designs or layout-designs in service of their personal needs or for non-commercial purposes, or for purpose of evaluation, analysis, research, teaching, testing, trial production or information collection for carrying out procedures of application for licenses for production, importation or circulation of products;

b/ Circulating, importing, exploiting utilities of products having been lawfully put on the market, including overseas markets, except for products put on the overseas markets not by the mark owners or their licensees;

c/ Using inventions, industrial designs or layout-designs only for the purpose of maintaining the operation of foreign means of transport in transit or temporarily staying in the Vietnamese territory;

d/ Using inventions or industrial designs by persons with the prior use right according to the provisions of Article 134 of this Law;

e/ Using inventions by persons authorized by competent state agencies according to the provisions of Articles 145 and 146 of this Law;

f/ Using layout-designs without knowing or having the obligation to know that such layout-designs are under protection;

g/ Using marks identical with or similar to protected geographical indications where such marks have acquired the protection in an honest manner before the date of filing applications for registration of such geographical indications.

h/ Using in an honest manner people’s names, descriptive marks of type, quantity, quality, utility, value, geographical origin and other properties of goods or services.

3. Owners of business secrets shall not have the right to prevent others from performing the following acts:

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