

**THE MINISTRY OF
SCIENCE AND
TECHNOLOGY**

No.: 04/2012/TT-BKHCHN

**SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness**

Hanoi, February 13, 2012

CIRCULAR

AMENDING AND SUPPLEMENTING SOME PROVISIONS OF THE CIRCULAR NO. 01/2008/TT-BKHCHN, OF FEBRUARY 25, 2008 GUIDING GRANT AND REVOCATION OF INDUSTRIAL PROPERTY ASSESSOR CARD AND CERTIFICATE OF ORGANIZATION ELIGIBLE TO OPERATE IN INDUSTRIAL PROPERTY ASSESSMENT, BEING AMENDED AND SUPPLEMENTED BY THE CIRCULAR NO. 04/2009/TT-BKHCHN, OF MARCH 27, 2009 AND THE CIRCULAR NO. 18/2011/TT-BKHCHN, OF JULY 22, 2011

Pursuant to the Law on intellectual property No. 50/2005/QH11, of November 29, 2005 and the Law No. 36/2009/QH12, of June 19, 2009 amending and supplementing a number of articles of the Law on intellectual property, of November 29, 2005 (hereinafter referred to as “the Law on intellectual property”);

Pursuant to the Government’s Decree No. 105/2006/ND-CP, of September 22, 2006 detailing and guiding implementation of a number of articles of Law on intellectual property regarding intellectual property right protection and intellectual property state management and the Government's Decree No. 119/2010/ND-CP, of December 30, 2010 amending and supplementing a number of articles of the Decree No. 105/2006/ND-CP (hereinafter referred to as “the amended Decree No. 105/2006/ND-CP”);

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

The Minister of science and technology amends and supplements some provisions of the Circular No. 01/2008/TT-BKHCHN, of February 25, 2008 guiding grant and revocation of industrial property assessor card and certificate of organization eligible to operate in industrial property assessment, being amended and supplemented by the Circular No. 04/2009/TT-BKHCHN, of March 27, 2009 and the Circular No. 18/2011/TT-BKHCHN, of July 22, 2011 (hereinafter referred to as "the Circular No. 01/2008/TT-BKHCHN") as follows:

Article 1. To amend and supplement some provisions of the Circular No. 01/2008/TT-BKHCHN:

1. To amend clause 1 section I of the Circular No. 01/2008/TT-BKHCHN as follows:

“1. The specialized sectors of industrial property assessment

The field of industrial property assessment specified in Article 201 of the Law on intellectual property and point b clause 2 Article 39 of the amended Decree No. 105/2006/ND-CP includes the following specialized sectors:

- a) Assessment on inventions and layout designs of semiconductor integrated circuits;
- b) Assessment of industrial designs;
- c) Assessment of marks and geographical indications;
- d) Assessment of other industrial property right".

2. To amend, supplement clause 2 section I of the Circular No. 01/2008/TT-BKHCHN as follows:

“2. Condition to grant industrial property assessor card and forms of assessment activities

2.1. Conditions to be granted industrial property assessor card (hereinafter referred to as “assessor card”) specified in clause 3, Article 201 of the Law on intellectual property are construed as follows:

- a) Condition of “Permanently residing in Vietnam” means having a sustainable and permanent living place without time limit in Vietnam and having registered for permanent residence as prescribed by law on residence;
- b) Condition of "Possessing good moral qualities” means not yet been handled administrative violations due to violations of law on industrial property or actions breaching professional ethics and not liable to criminal prosecution or have been condemned but not yet deleted criminal records.
- c) Condition of “Possessing a university or higher degree in the specialized area of field requesting to be granted the assessor card" means having a university degree or postgraduate degree in technical, science and physical, chemical or biological sectors for specialized sectors of assessment of invention and layout design of semiconductor integrated circuit; having a university degree or postgraduate degree in any sector for other specialized sectors of assessment;
- d) Condition of “having conducted actual professional activities in domains which an assessor card is applied for five years or more” means directly having conducted work of solving disputes, complaints, inspections, examinations, legal affairs, consultancy on industrial property law, science research with a title as researcher, teaching on industrial property with a title as lecturer from 5 years or more, or being persons who directly having conducted work of explaining, guiding implementation of law, elaborating regulation, directly conducted or approved results of appraisal of application for registration of inventions (including utility solution), or application for registration of industrial designs, or application for registration of trademarks or application for registration of geographical indications (including goods origin

appellations) at national or international industrial property agencies from 5 years or more, or being persons having practiced industrial property representation service from 5 years or more.

2.2. An industrial property assessor may operate in an industrial property assessment organization under name of such organization, or operate independently. In case operation under name of an industrial property assessment organization, information of such assessors must be recognized in List of assessors in organization under procedures for granting certificate of assessment organization and that operational form recognized in List of industrial property assessors specified in clause 6 section III of this Circular.”

3. To amend, supplement clause 3 section I of the Circular No. 01/2008/TT-BKHHCN as follows:

“3. Organizations being granted certificate of organization eligible to operate in industrial property assessment

3.1. Organizations meeting conditions specified in clause 2 Article 201 of the Law on intellectual property are granted certificates of organization eligible to operate in industrial property assessment (hereinafter referred to as “certificate of assessment organization”).

3.2. Organizations specified in clause 1 Article 42 of the amended Decree No. 105/2006/ND-CP include the following organizations:

a) Enterprises, including: limited liability companies, joint-stock companies, partnerships and private enterprises of all economic sectors established and operate as prescribed by law on enterprises;

b) Cooperatives and inter-cooperatives established and operate as prescribed by law on cooperatives;

c) Non-business units established and operate under Decisions of competent agencies, organizations;

d) Law-practicing organizations of Vietnam established and operate as prescribed by law on lawyers, including: Lawyers' offices; limited-liability law firms; law partnerships; except for branches of foreign law-practicing organizations, limited-liability law firms with 100% foreign capital, limited liability law firms under joint-venture between law-practicing organizations of Vietnam and foreign law-practicing organizations.

Branches and other dependent units of organizations under cases specified in this clause may operate assessment only under name of organizations which they depend on according to authorization of those organizations”.

4. To cancel clause 4 section I of the Circular No. 01/2008/TT-BKHHCN.

5. To amend point a clause 1 section II of the Circular No. 01/2008/TT-BKHHCN as follows:

“a) Contents of inspection of assessment professional skills specified in clause 3 Article 201 of the Law on intellectual property include subject on law on industrial property and specialized subjects on assessment.”

6. To amend clause 5 section III of the Circular No. 01/2008/TT-BKHCHN as follows:

“5. Revocation of assessor card

The director of National Office of Intellectual Property shall issue decisions on revocation of assessor card in the following cases:

- a) Having evidences to affirm that the assessor card is granted contrary to provisions of law;
- b) Persons being granted assessor card no longer meet conditions specified in clause 3, Article 201 of the Law on intellectual property and clause 2, section I of this Circular;
- c) Persons being granted assessor card abandon assessment operation”.

7. To amend clause 1 section IV of the Circular No. 01/2008/TT-BKHCHN as follows:

“1. Competence of grant, re-grant, revocation of certificate of assessment organization

- a) The director of National Office of Intellectual Property has right to grant, re-grant, revoke certificates of assessment organization as prescribed in clauses 2, 3, 4 and 5 section IV of this Circular for non-business units being science and technology organizations registered science and technology operation at the Ministry of Science and Technology.
- b) The directors of Departments of Science and Technology have competence to grant, re-grant, revoke certificates of assessment organization as prescribed in clauses 2, 3, 4 and 5 section IV of this Circular for organizations specified in clause 3 section I of this Circular registered trading and operation at competent state agencies of their localities.
- c) The National Office of Intellectual Property, Departments of Science and Technology are agencies receiving and considering dossiers requesting for grant of certificate of assessment organization under corresponding competence specified in point a and point b above-mentioned”.

8. To amend point b, clause 2 section IV of the Circular No. 01/2008/TT-BKHCHN as follows:

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

- b) Copies of Enterprise registration certificate (for enterprises), Certificate of Business registration (for cooperatives, inter-cooperatives), Certificate of registration of science-technological operation (for non-business units being science and technology organizations), decision on establishment and operation registration (in case law prescribed compulsorily

operation registration – for non-business units not being science and technology organizations) or Operation registration for law-practicing organizations (present originals for comparison, unless copies have been authenticated).

9. To amend clause 2 section V of the Circular No. 01/2008/TT-BKHHCN as follows:

“Charges and Fees

Collection, remittance, management and use of charges, fees in examination of assessment professional skills, appraisal of dossiers of grant, re-grant of assessor card and certificate of assessment organization specified in this Circular are implemented as prescribed in the Circular No. 22/2009/TT-BTC, of February 04, 2009, of the Ministry of Finance stipulating rates, the collection, remittance, management and use of industrial property charges and fees”.

Article 2. Effectiveness

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

In the course of implementation, any arising problems should be reported to the Ministry of Science and Technology for research and settlement.

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

Tran Van Tung