

THE GOVERNMENT

No. 119/2010/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

Hanoi, December 30, 2010

DECREE

AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES THE GOVERNMENT'S DECREE NO. 105/ 2006/ND-CP OF SEPTEMBER 22, 2006, DETAILING AND GUIDING A NUMBER OF ARTICLES OF THE LAW ON INTELLECTUAL PROPERTY REGARDING PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AND STATE MANAGEMENT OF INTELLECTUAL PROPERTY

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Law on Intellectual Property, amended and supplemented on June, 19,2009;

At the proposal of the Minister of Science and Technology,

DECREES:

Article 1. To amend and supplement a number of articles of the Government's Decree No. 105/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual Property on protection of industrial property rights and on state management of intellectual property, as follows:

1. To amend Article 1 as follows:

"Article 1. Scope of regulation

This Decree details and guides the implementation of a number of articles of the Law on Intellectual Property regarding identification of acts, nature and extent of infringement of intellectual property rights, identification of damage, requests for handling of infringements and settlement of those requests, handling of infringements of intellectual property rights, control of exports and imports related to intellectual property, assessment of intellectual property, and state management of intellectual property."

2. To amend Clause 1, Article 14 as follows:

"Article 14. Infringing elements of plant varieties

1. An infringing element of a plant variety may take one of the following forms:

a/ Use of a propagative material of a protected plant variety to commit the acts specified in Clause 1, Article 186 of the Law on Intellectual Property without permission of the protection title holder;

b/ Use of a propagative material or any plant variety specified in Article 187 of the Law on Intellectual Property;

c/ Use of the name of a plant variety of the same species or a species close to the species of a protected plant variety that is identical or confusingly similar to the name of the protected plant variety;

d/ Points a and b of this Clause also apply to harvested materials if the protection title holder has no reasonable conditions for exercising his/ her rights to the propagative material of the same plant variety."

3. To amend Clause 1, Article 23 as follows:

"**Article 23.** Documents and evidence accompanying petitions for handling of infringements

1. A requester for handling of an infringement shall file a petition for handling of infringement together with the following documents and evidence to prove the request:

a/ Evidence proving that the requester is the right holder, if the requester is the right holder or an assignee, heir or successor of the intellectual property rights;

b/ Evidence proving the actual occurrence of the act of infringement; proving the suspicion of infringing imports or exports, for petitions for suspension of customs clearance for imports or exports suspected of infringement;

c/ Other documents and evidence to prove the request."

4. To amend and supplement Clauses 1 and 2, Article 24 as follows:

"**Article 24.** Evidence to prove the right holder status

1. For inventions, industrial designs, lay-out designs, marks, geographical indications, plant varieties, copyright, rights of performers, rights of producers of phonograms or video recordings or rights of broadcasting organizations already registered, evidence to prove the right holder status may be any of the following documents:

a/ A copy of the invention, utility solution or industrial design patent; the layout design, mark or geographical indication registration certificate; the plant variety protection title; the copyright or related right registration certificate; enclosed with the original for comparison, unless the copy has been duly authenticated;

b/ An excerpt from the national register of industrial property; an excerpt from the national register of copyright and related rights; an excerpt from the national register of rights to protected plant varieties, issued by a competent agency that has registered those subject matters.

2. For an internationally registered mark, the evidence to prove the right holder status is a copy of the certificate of protection in Vietnam of such internationally registered mark issued by the state management agency in charge of industrial property, enclosed with the original for comparison, unless the copy has been duly authenticated."

5. To change the title of Chapter TV as follows:

"Chapter IV. Handling of infringements of intellectual property rights"

6. To amend Clauses 1 and 2, Article 28 as follows:

"**Article 28.** Determination of the value of infringing goods

1. Infringing goods are defined as follows:

a/ Infringing goods are parts or details (below referred to as components) of products which contain infringing elements and can be circulated as independent products;

b/ If it is impossible to detach the infringing element as an independent component of a product which can be independently circulated under Point a of this Clause, then the infringing goods shall be the whole product that contains the infringing element.

2. The value of infringing goods shall be determined by the infringement-handling agency at the time of occurrence of the infringement and based on the grounds which are arranged in the following priority order:

a/ The quoted price of the infringing goods;

b/ The actual selling price of the infringing goods;

c/ The cost of the infringing goods (if not yet put into circulation);

d/ The import price of the infringing goods."

7. To annul Article 33.

8. To amend Clause 1, Article 36 as follows:

"**Article 36.** Procedures for processing petitions

1. Within 20 days after receiving a petition for inspection or supervision of imports or exports, or within 24 working hours after receiving a petition for suspension of customs clearance, the customs office shall consider and issue a notice of acceptance of the petition, if the petitioner has performed the obligations provided at Points a, b and c, Clause 1 and 2. Article 217 of the Law on Intellectual Property. In case of rejection, the customs office shall reply in writing to the petitioner, clearly stating the reason."

9. To amend Clause 1 of, and add Clause 3 to Article 39 as follows:

"**Article 39.** Contents and areas of intellectual property assessment

1. Intellectual property assessment covers the following contents:

a/ Determining the scope of protection of the intellectual property right subject matter under Article 6 of this Decree;

b/ Determining whether or not an object in question fully meets the conditions for being treated as an intellectual property right infringing element under Clause 2, Article 5, and Articles 7 thru 14 of this Decree;

c/ Determining whether or not there exists an identicalness, equivalence, similarity, confusability, indistinctness or duplicability between an object in question and a protected object;

d/ Determining the value of the intellectual property rights and the value of damage.

3. The Ministry of Culture, Sports and Tourism, the Ministry of Science and Technology and the Ministry of Agriculture and Rural Development shall specifically guide the intellectual property assessment in the areas specified in Clause 2 of this Article which fall under their respective management."

10. To amend and supplement Article 42 as follows:

"**Article 42.** Intellectual property assessment organizations

1. The organizations defined in Clause 2, Article 201 of the Law on Intellectual Property, which are allowed to conduct intellectual property assessment, include:

a/ Enterprises established and operating under the law on enterprises;

b/ Cooperatives and unions of cooperatives established and operating under the law on cooperatives;

c/ Non-business units;

d/ Law-practicing organizations established and operating under the law on lawyers, excluding subsidiaries of foreign law-practicing organizations, wholly foreign-owned limited liability law firms, limited liability law firms in the form of joint ventures between Vietnamese law-practicing organizations and foreign law-practicing organizations.

2. An intellectual property assessment organization must satisfy the following conditions:

a/ Having at least one intellectual property assessor;

b/ Having a working office, equipment and facilities;

c/ Having a necessary database for assessment.

3. An intellectual property assessment organization may conduct assessment only in operation areas it has registered."

11. To amend and supplement Article 43 as follows:

"**Article 43.** Rights and obligations of intellectual property assessment organizations

1. Intellectual property assessment organizations have the following rights:

a/ To hire intellectual property assessors to conduct assessment on a case-by-case basis;

b/ To request agencies, organizations and individuals to provide information and documents related to assessed objects for assessment purposes, unless otherwise provided by law;

c/ Other rights provided by law.

2. Intellectual property assessment organizations have the following obligations:

a/ To operate only in areas indicated in their business registration certificates or operation registration certificates;

b/ To preserve and archive documents and dossiers related to cases of assessment;

c/ To keep confidential information and documents at the request of agencies, organizations and individuals that request or solicit the assessment, and to pay compensations for any damage caused to concerned agencies, organizations and individuals;

d/ Other obligations specified by law."

12. To amend and supplement Article 44 as follows:

"**Article 44.** Intellectual property assessors

1. Intellectual property assessors are those with adequate professional knowledge and skills to assess and conclude on issues related to the contents of assessment, and being recognized and granted intellectual property assessor cards by a competent state agency.

2. Persons who fully satisfy the conditions specified in Clause 3, Article 201 of the Law on Intellectual Property may be recognized and granted intellectual property assessor cards by a competent state agency.

3. Intellectual property assessors have the following rights:

a/ To operate either independently or as a member of an intellectual property assessment organization;

b/ To refuse to conduct assessment when related documents are insufficient or invalid for making an assessment conclusion;

c/ To use examination results or professional conclusions or expert opinions in assessment activities;

d/ Independent intellectual property assessors may request agencies, organizations and individuals to provide information and documents related to assessed objects for assessment purposes, unless otherwise provided by law;

e/ Other rights provided by law.

4. Intellectual property assessors have the following obligations:

a/ To compile assessment dossiers, to present themselves when summoned by assessment-soliciting agencies; to explain assessment conclusions when requested;

b/ To preserve exhibits and documents related to cases of assessment;

c/ To make independent assessment conclusions and take responsibility for these conclusions. In case they intentionally make wrong assessment conclusions, causing damage to concerned individuals and organizations, they shall pay damages;

d/ To refuse to conduct assessment in case they have rights and interests related to assessed objects or cases of assessment or for other reasons which may affect the objectiveness of assessment conclusions;

e/ To keep confidential information and documents at the request of agencies, organizations and individuals that request or solicit assessment, and to compensate for any damage caused to concerned agencies, organizations and individuals;

f/ To comply with regulations on assessment order and procedures;

g/ Other obligations specified by law."

13. To amend and supplement Clause 3, Article 50 as follows:

"Article 50. Additional assessment, re-assessment

3. In case there is a divergence among assessment conclusions or between assessment conclusions and expert opinions of the state management agency in charge of intellectual property on the same matter subject to assessment, the assessment inviter or requester may solicit further assessment or request another assessment organization or assessor to conduct a re-assessment.

When necessary, the assessment-soliciting agency may set up an advisory council which is composed of experts and representatives of concerned agencies and organizations, to collect expert opinions about an issue subject to assessment."

14. To amend Clause 1, Article 51 as follows:

"Article 51. Written assessment conclusions

1. Written assessment conclusions serve as a source of evidence for competent agencies to handle cases. Written assessment conclusions do not conclude on intellectual property rights infringements or cases of dispute."

15. To add Point f to Clause 1, Article 55 as follows:

"Article 55. Responsibilities of the Ministry of Science and Technology

f/ To develop a database system and establish a national information network on the state management of intellectual property and the protection of intellectual property rights."

16. To replace the phrase "Ministry of Culture and Information" with the phrase "Ministry of Culture, Sports and Tourism" in Clause 1, Article 55; Article 56; Article 58; Clause 1, Article 60; and Clause 1, Article 63 of the Government's Decree No. 105/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual Property on the protection of intellectual property rights and the state management of intellectual property.

Article 2. Effect

This Decree takes effect on February 20, 2011.

Article 3. Implementation guiding responsibility

1. The Minister of Science and Technology, the Minister of Culture, Sports and Tourism and the Minister of Agriculture and Rural Development shall guide the implementation of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung