

**No. 23/2023/TT-BKHCN**

*Hanoi, November 30, 2023*

**CIRCULAR**

**Detailing a number of articles of the Law on Intellectual Property and providing measures to implement the Government’s Decree No. 65/2023/ND-CP of August 23, 2023, detailing a number of articles of, and providing measures to implement, the Law on Intellectual Property regarding industrial property, protection of industrial property rights and plant variety rights and the state management of intellectual property related to procedures for establishment of industrial property rights and assurance of industrial property information<sup>1</sup>**

*Pursuant to the November 29, 2005 Law on Intellectual Property; the June 19, 2009 Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property; the June 14, 2019 Law Amending and Supplementing a Number of Articles of the Law on Insurance Business and the Law on Intellectual Property; and the June 16, 2022 Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property;*

*Pursuant to the Government’s Decree No. 28/2023/ND-CP of June 2, 2023, defining the functions, tasks, powers and organizational structure of the Ministry of Science and Technology;*

*Pursuant to the Government’s Decree No. 65/2023/ND-CP of August 23, 2023, detailing a number of articles of, and providing measures to implement, the Law on Intellectual Property regarding industrial property, protection of industrial property rights and plant variety rights and the state management of intellectual property;*

*At the proposal of the Director of the Intellectual Property Office of Vietnam, and the Director of the Legal Department;*

*The Minister of Science and Technology promulgates the Circular detailing a number of articles of the Law on Intellectual Property and providing measures to implement the Government’s Decree No. 65/2023/ND-CP of August 23, 2023, detailing a number of articles of, and providing measures to implement, the Law on Intellectual Property regarding industrial property, protection of industrial property rights and plant variety rights and the state management of intellectual property related to procedures for establishment of industrial property rights and assurance of industrial property information.*

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<sup>1</sup> Công Báo Nos 1329-1330 (22/12/2023)

Chapter I  
GENERAL PROVISIONS

**Article 1.** Scope of regulation

This Circular details a number of articles of the Law on Intellectual Property and provides measures to implement the Government's Decree No. 65/2023/ND-CP of August 23, 2023, detailing a number of articles of, and providing measures to implement, the Law on Intellectual Property regarding industrial property, protection of industrial property rights and plant variety rights and the state management of intellectual property related to procedures for establishment of industrial property rights and assurance of industrial property information (below referred to as Decree No. 65/2023/ND-CP).

**Article 2.** Subjects of application

Organizations and individuals that carry out procedures for registration, and procedures for filing and settlement of complaints about activities of establishing industrial property rights and assuring industrial property information, and other related organizations and individuals.

**Article 3.** Interpretation of terms

In this Circular, the terms below are construed as follows:

1. Applicant for industrial property registration (below referred to as applicant) means an organization or individual that files an application for invention, layout design, industrial design, mark or geographical indication registration. When an invention, layout design, industrial design or mark protection title is granted, the applicant will be recognized as the protection title holder. When a geographical indication protection title is granted, the applicant will be recognized as the person registering such geographical indication.

2. Complainant means an organization or individual that files a complaint related to industrial property procedures under Clause 1, Article 119a of the Law on Intellectual Property.

3. Person having average knowledge of the relevant art means a person who has ordinary practice skills and common general knowledge in the relevant art.

4. Paris Convention means the 1883 Paris Convention for the Protection of Industrial Property, as revised in 1967 and 1979.

5. Budapest Treaty means the 1977 Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure, as revised in 1980.

**Article 4.** Representatives of applicants/complainants

1. Lawful representatives of applicants/complainants specified in Articles 89 and 119a of the Law on Intellectual Property are specified as follows:

a/ For applicants/complainants that are organizations or individuals specified in Clause 1, Article 89 and Clause 2, Article 119a of the Law on Intellectual Property:

(i) For applicants/complainants that are individuals: Their lawful representatives are their legal representatives or authorized representatives or their authorized industrial property representation service organizations;

(ii) For applicants/complainants that are organizations: Their lawful representatives are their legal representatives or persons from organizations authorized by their legal representatives; their authorized industrial property representation service organizations; or heads of Vietnam-based representative offices or branches or legal representatives of Vietnam-based wholly foreign-invested organizations established in accordance with the investment law (for foreign applicants/complainants).

In case subject matters requested for protection are outcomes of state budget-funded scientific and technological tasks assigned before the effective date of the June 16, 2022 Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property or fall in the field of security and national defense: Lawful representatives of applicants/complainants are the state owner's representatives, industrial property representation service organizations, or organizations in charge of scientific and technological tasks as authorized by the state owner's representatives.

b/ For applicants/complainants that are foreign individuals who are not permanently residing in Vietnam, or organizations and individuals that have no Vietnam-based production or business establishments as specified in Clause 2, Article 89 and Clause 2, Article 119a of the Law on Intellectual Property: Their lawful representatives are their authorized industrial property representation service organizations.

2. Upon carrying out related procedures, the Intellectual Property Office of Vietnam may only conduct transactions with applicants/complainants or their lawful representatives specified in Clause 1 of this Article. Conducting transactions with the above subjects is below referred to as conducting transactions with applicants/complainants.

**Article 5.** Authorization for representatives to carry out procedures for establishing industrial property rights

1. The authorization for representatives, including also sub-authorization and authorization for representatives to carry out procedures for establishing industrial property rights (below collectively referred to as authorization), must comply with the Civil Code's provisions on authorization, Article 107 of the Law on Intellectual Property, and this Circular's guidance.

Applicants/complainants may replace their representatives (below referred to as authorization replacement). The authorization replacement leads to termination of the authorization relation between applicants/complainants and authorized parties. The authorization replacement shall be declared in writing by applicants/complainants (in the power of attorney or a separate document).

Authorized parties may sub-authorize other parties in accordance with the Civil Code, provided that the sub-authorized organizations and individuals meet the requirements

specified in Article 4 of this Circular. The sub-authorization may only be performed after the initial authorization is recognized by the Intellectual Property Office of Vietnam under Clause 2 of this Article.

2. The point of time when a power of attorney is recognized in transactions with the Intellectual Property Office of Vietnam is the date the Intellectual Property Office of Vietnam receives a valid power of attorney. In case of authorization replacement or sub-authorization or modification of information related to a change in the scope of authorization or premature termination of the authorization or change of the authorized party's address, that point of time is the date the Intellectual Property Office of Vietnam receives relevant valid documents.

3. In case a power of attorney is filed after an application is filed but before the application is considered valid or accepted, the Intellectual Property Office of Vietnam shall conduct transactions with the person who declares himself/herself as the representative of the applicant/complainant (in the declaration form or the complaint form) in order to carry out procedures for formal examination for making conclusions on whether the application is valid or not or whether the application is accepted or not, including also a conclusion on legality of the representation status.

4. Any transaction of an authorized party within the scope of authorization at any time will be considered a transaction conducted on the behalf of the applicant/complainant, giving rise to rights and obligations of the applicant/complainant. In case of authorization replacement or sub-authorization, the replaced representative or sub-authorized party shall take over the representation with all issues arising due to activities of the previous authorized party in previous transactions with the Intellectual Property Office of Vietnam.

5. If a power of attorney's scope of authorization covers multiple procedures that are independent from one another and its original has been submitted to the Intellectual Property Office of Vietnam, the authorized party shall, when carrying out subsequent procedures, submit a copy of such power of attorney with accurate instructions to the serial number of the application containing the original power of attorney in the declaration form or documents of the subsequent procedures.

6. In case of authorization for an organization or individual not licensed to act as a representative or simultaneous authorization for more than one organization or individual, including an organization or individual not licensed to act as a representative, the application will be considered invalid.

#### **Article 6.** Responsibilities of applicants/complainants and their representatives

1. Applicants/complainants and their representatives shall ensure the truthfulness of information and documents provided to the Intellectual Property Office of Vietnam in the course of establishing industrial property rights, specifically as follows:

a/ All transaction documents shall be certified by applicants/complainants or their representatives by themselves with their signatures and seals (if any), or notarized or authenticated if such is required by law.

b/ All Vietnamese translations of documents written in languages other than Vietnamese must bear the undertaking by applicants/complainants or their representatives that they are verbatim translations of original documents, unless they are notarized;

c/ In case representatives of applicants/complainants are industrial property representation service organizations, persons who represent such organizations in signing transaction documents must possess industrial property representation service practice certificates.

2. Applicants/complainants shall take responsibility for all consequences and obligations arising from transactions conducted by their representatives with the Intellectual Property Office of Vietnam in accordance with law.

3. Representatives of applicants/complainants shall take responsibility before the latter in accordance with law.

#### **Article 7. Industrial property charges and fees**

1. Applicants and industrial property service users shall pay charges and fees under the Ministry of Finance's regulations and other service charges in accordance with law.

2. Collection of charges and fees is specified as follows:

a/ Upon receiving applications or requests for the performance of procedures subject to charges and fees, the Intellectual Property Office of Vietnam shall request applicants to pay charges and fees under regulations (sending charge/fee collection notices to applicants);

b/ Upon collecting charges and fees, the Intellectual Property Office of Vietnam shall make charge and fee receipts for use as charge and fee payment documents, clearly stating collected charge and fee amounts and rates, and keep them in application files to serve the formal examination of applications;

c/ In case charges and fees are paid by post or remitted directly into the account of the Intellectual Property Office of Vietnam, the charge and fee collection shall be determined on the basis of copies of charge and fee receipts included in applications.

### Chapter II

## PROCESSING OF REGISTRATION APPLICATIONS FOR ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS

### Section 1

## GENERAL PROVISIONS ON PROCESSING OF REGISTRATION APPLICATIONS FOR ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS

**Article 8.** Receipt of registration applications for establishment of industrial property rights

1. The Intellectual Property Office of Vietnam shall receive applications filed in accordance with Article 89 of the Law on Intellectual Property and Clause 1, Article 48 of Decree No. 65/2023/ND-CP.

2. The Intellectual Property Office of Vietnam shall receive an application that comprises the documents specified in Clause 1, Article 108 of the Law on Intellectual Property or Clause 3, Article 48 of Decree No. 65/2023/ND-CP, certify its filing date and serial number, and issue a receipt to the applicant, providing information on the filing date and serial number of the application and results of the checking of the list of documents included in the application, together with full name and signature of the application recipient.

Upon receiving an application filed online, the Intellectual Property Office of Vietnam shall issue to the applicant a receipt containing information on the filing date and serial number of the application and results of the checking of the list of documents included in the application, together with full name and signature of the application recipient, via the online application filing system.

3. In case an application lacks one of the documents specified in Clause 1, Article 108 of the Law on Intellectual Property or Clause 3, Article 48 of Decree No. 65/2023/ND-CP, the application recipient shall refuse to accept it or send a notice of the Intellectual Property Office of Vietnam on refusal to accept it to the applicant (if the application is filed by post or via the online application filing system). For applications filed by post and refused to be accepted, the Intellectual Property Office of Vietnam is not required to return to applicants the documents included in such applications, except originals thereof submitted for collation.

**Article 9.** Formal examination of applications

1. Formal examination of an application under Article 109 of the Law on Intellectual Property means examination of its compliance with the provisions on application format for making a conclusion on whether the application is considered valid or not.

2. An application is considered invalid if falling into one of the following cases:

a/ There is a ground to confirm that the applicant does not have the registration right under Articles 86, 86a, 87 and 88 of the Law on Intellectual Property;

b/ The application is filed in contravention of Article 89 of the Law on Intellectual Property;

c/ There is a ground to immediately confirm that the subject matter stated in the application is ineligible for protection by the State under Articles 8, 59, 64, 69, 73 and 80 of the Law on Intellectual Property;

d/ The application is filed in contravention of the provisions on security control for inventions before they are registered abroad of Article 89a of the Law on Intellectual Property, even in case of international applications directly filed to the International Bureau;

dd/ The applicant fails to fully pay charges and fees under Article 7 of this Circular (even in case the applicant fails to fully pay the filing fee, charge for application publication, charge for application examination and charge for search for information to serve the examination, except the charge for search for information to serve the examination and charge for substantive examination of an invention registration application if such application does not require substantive examination);

e/ The format requirements specified in Articles 14, 17, 21, 24 and 28 of this Circular are not satisfied (there are errors):

(i) The application fails to satisfy the requirements on number of copies of one of compulsory documents or format requirements; the mark registration application fails to clearly state the to-be-registered mark, lacks the mark description, does not classify or inaccurately classifies inventions, industrial designs, goods and services bearing the mark while the applicant fails to pay the classification charge, or lacks translations of documents proving grounds for enjoying the priority right (while so required) or translations of documents proving the registration right if the applicant inherits or takes over the registration right from another person; information on the applicant in different documents is not consistent or has been erased or deleted or is not properly certified; the declaration form contains insufficient information on the author (for invention, industrial design and layout design registration applications), the applicant or the representative, bears no signature and/or seal (if any) of the applicant or the representative; or documents in the confidential invention registration application bear no “confidential” stamp under regulations, etc.

(ii) There is no valid power of attorney (if the application is filed through a representative).

3. The filing date is determined as follows:

a/ The filing date is the date an application is received by the Intellectual Property Office of Vietnam under Clause 2, Article 8 of this Circular;

b/ For international applications that designate and/or select Vietnam, the filing date is the date such an application is filed.

4. The priority date is determined as follows:

a/ If an application contains no claim for the priority right or if an application contains a claim for the priority right but is not accepted by the Intellectual Property Office of Vietnam, such application is regarded as having no priority date;

b/ If an application contains a claim for the priority right, the priority date(s) is/are the date(s) stated in such application as accepted by the Intellectual Property Office of Vietnam;

c/ The determination of the priority date according to a claim for the priority right on the basis of the initial application(s) filed in Vietnam must adhere to the principle specified in Article 91 of the Law on Intellectual Property and respective provisions of Points b, c and dd, Clause 1, Article 12 of Decree No. 65/2023/ND-CP.

5. The Intellectual Property Office of Vietnam shall notify results of formal examination and issue a decision to accept a valid application under the following provisions:

a/ If the application falls into one of the cases specified in Clause 2 of this Article, the Intellectual Property Office of Vietnam shall send to the applicant a notice of results of the formal examination, with the intent to refuse to accept the application for the reason that it is invalid. Such notice must clearly state the name and address of the applicant; name of the authorized person (if any); name of the subject matter stated in the application; filing date and serial number of the application; and reasons and errors that are likely to make the application rejected, and set a time limit of 2 months from the date of notice issuance for the applicant to make an objection or correct such errors.

Particularly for documents proving grounds for enjoying the priority right, the applicant may additionally submit them within 3 months from the filing date under Point d, Clause 1, Article 12 of Decree No. 65/2023/ND-CP.

b/ In case the application is valid, the Intellectual Property Office of Vietnam shall issue a decision to accept the valid application, clearly stating the name and address of the applicant, name of the authorized person (if any), and information on the subject matter stated in the application, filing date and serial number of the application, and the priority date (if any), and send it to the applicant. In case the claim for the priority right is not accepted, the application may still be accepted as valid, unless the application contains other errors that affect its validity, and the decision must clearly state reason(s) for refusal to accept the claim for the priority right.

6. In case an applicant has received the Intellectual Property Office of Vietnam's notice of results of formal examination with the intent to refuse to accept the application for the reason that it is invalid under Point a, Clause 5 of this Article, but fails to correct errors or unsatisfactorily corrects errors or makes no objection or makes a groundless objection within the set time limit, the Intellectual Property Office of Vietnam shall issue a decision on refusal to accept the application and send it to the applicant.

7. Time limit for formal examination of applications:

a/ The time limit for formal examination of an application is 1 month from the filing date under Clause 1, Article 119 of the Law on Intellectual Property;



b/ In case the Intellectual Property Office of Vietnam issues a notice under Point a, Clause 5 of this Article, the period for the applicant to reply to such notice is not counted into the time limit for formal examination. This period is construed as:

(i) The period from the date of notice issuance to the date the applicant replies to the notice; or,

(ii) The time limit set in the notice (even in case of its extension specified in Clause 2, Article 15 of Decree No. 65/2023/ND-CP), in case the applicant fails to reply to the notice.

c/ In case the applicant requests modification or supplementation of the application or replies to the Intellectual Property Office of Vietnam's notice specified at Point a, Clause 5 of this Article, the time limit for formal examination may be extended for 10 days under Clause 4, Article 119 of the Law on Intellectual Property;

d/ Before the expiration of the time limit specified at Point a, b or c of this Clause, the Intellectual Property Office of Vietnam shall complete the formal examination of the application and notify results thereof to the applicant under Clauses 5 and 6 of this Article.

#### **Article 10.** Publication of valid applications

1. Information related to applications accepted as valid shall be published by the Intellectual Property Office of Vietnam on the Industrial Property Official Gazette under Article 110 of the Law on Intellectual Property. Applicants shall pay a charge for publication of their applications under regulations.

2. The publication of invention, industrial design, mark and geographical indication registration applications is as follows:

a/ For invention registration applications:

(i) An invention registration application shall be published in the nineteenth month from the priority date or filing date, if the application has no priority date;

(ii) An invention registration application requested for early publication shall be published within 2 months from the date the Intellectual Property Office of Vietnam receives a request for early publication or from the date of acceptance of the valid application, whichever comes later.

b/ For industrial design registration applications:

(i) An industrial design registration application shall be published within 2 months after it is accepted as valid, if the applicant does not request late publication or requests late publication but the application is accepted as valid after the expiration of the time limit for the applicant to file a request for late publication;

(ii) In case an applicant requests late publication and his/her/its application is accepted as valid before the expiration of the time limit for the applicant to request late publication, the application shall be published in the month following the month in which that time limit expires.

c/ A mark registration application or geographical indication registration application shall be published within 2 months after it is accepted as valid.

3. Information to be published on the Industrial Property Official Gazette includes information related to the formally valid application as stated in the decision on acceptance of the valid application (including also the serial number and date of issuance of the decision) and the following information:

a/ For an invention registration application: name and citizenship of the invention author; information related to the valid application (application conversion or splitting, initial serial number of the converted/split application, etc.); invention summary; typical drawing(s) accompanying the invention summary (if any); date of request for substantive examination (if any); date of request for early publication (if any); international classification of the invention; and other information (if any).

b/ For an industrial design registration application: name and citizenship of the industrial design author; information related to the valid application (application splitting, initial serial number of the split application, etc.); photos or drawings of the industrial design; number of plans requested for protection; international classification of the industrial design; and other information (if any).

c/ For a mark registration application: mark sample and list of goods and services bearing the mark; information related to the valid application (application conversion or splitting, initial serial number of the split application, etc.); international classification of goods and services; and other information (if any); and use regulation (for collective marks and certification marks).

d/ For a geographical indication registration application: summary of special characteristics and names of products bearing the geographical indication; and other information (if any).

#### **Article 11.** Processing of objections to industrial property registration applications

1. In case an objection to an industrial property registration application is made under Article 112a of the Law on Intellectual Property and satisfies the requirements specified in Clause 9 of this Article, the Intellectual Property Office of Vietnam shall receive and notify such objection to the applicant, setting a time limit of 2 months from the date of notification for the applicant to reply in writing, except the cases specified in Clauses 2 and 5 of this Article.

2. In case a mark and goods/services stated in an objected mark registration application is/are identical to the mark and goods/services cited by the objecting party or in case there is a clear ground to conclude that the objected mark and goods/services is/are confusingly similar or confusingly dissimilar to the mark and goods/services cited by the objecting party, the Intellectual Property Office of Vietnam shall process the objection in the course of substantive examination of the mark registration application and notify results

thereof together with the results of substantive examination of the application to the objecting party.

3. After receiving the applicant's feedback within the time limit specified in Clause 1 of this Article, if deeming it necessary, the Intellectual Property Office of Vietnam shall notify such feedback to the objecting party and set a time limit of 2 months from the date of notification for the objecting party to reply in writing about such feedback.

4. Based on information, evidence and arguments (if any) provided by the parties under Clauses 1 and 3 of this Article or/and results of the dialogue between the parties under Clause 7 of this Article and documents included in the application, the Intellectual Property Office of Vietnam shall process the objection and notify results thereof together with the results of substantive examination of the application to the objecting party.

5. In case an objecting party's objection is related to the registration right, the Intellectual Property Office of Vietnam shall issue a notice thereof to the objecting party for the latter to initiate a lawsuit at a competent court in accordance with the civil procedure law, unless:

a/ There is a clear ground to determine that the applicant has no filing right under Clause 7, Article 87 of the Law on Intellectual Property;

b/ The objection about the right to file mark registration applications for a sign is or contains a sign being a place name or another sign indicating the geographical origin of a Vietnamese local specialty as specified in Clauses 3 and 4, Article 87 of the Law on Intellectual Property.

6. Within 2 months after the Intellectual Property Office of Vietnam issues a notice under Clause 5 of this Article, if the objecting party fails to send to the Intellectual Property Office of Vietnam a copy of the court's notice of case acceptance, the Intellectual Property Office of Vietnam may regard such failure as the objecting party having withdrawn the objection and continue to process the application as if there is no objection. In case the Intellectual Property Office of Vietnam receives a copy of the court's notice of case acceptance from the objecting party within the above time limit, the Intellectual Property Office of Vietnam shall suspend the processing of the application to await results of dispute settlement by the court. After receiving the court's dispute settlement results, the processing of the application shall be carried out based on such results.

7. The Intellectual Property Office of Vietnam shall organize a direct dialogue between the objecting party and the applicant in order to further clarify the issue subject to the objection if deeming it necessary or at the request of both parties.

8. The time limit for an applicant to respond to an objecting party's objection and the time limit for the objecting party to make a feedback to the applicant's response under Clauses 1 and 3 of this Article are not counted into the time limit for the Intellectual Property Office of Vietnam to carry out relevant procedures under regulations.

9. Objections to industrial property registration applications shall be made in Vietnamese. Documents accompanying objections may be made in other languages but shall be translated into Vietnamese when so requested by the Intellectual Property Office of Vietnam.

**Article 12. Substantive examination of applications**

1. Substantive examination of applications under Article 114 of the Law on Intellectual Property means evaluation of the protectability of subject matters stated in such applications based on protection conditions and determination of the respective scope (volume) of protection. Substantive examination is not applicable to layout design registration applications.

2. Substantive examination of an application is as follows:

a/ Subject to examination are:

(i) Evaluation of the conformity of the subject matter stated in the application with the type of protection title to be granted;

(ii) Evaluation of the subject matter based on each protection condition;

(iii) Checking of the first-to-file principle.

b/ The evaluation based on protection conditions shall be carried out for subject matters one after another (if the application includes more than one subject matter while ensuring their uniformity). For each subject matter, the evaluation shall be carried out under protection conditions one after another:

(i) For an invention registration application, the evaluation shall be carried out for points stated in the scope of (request for) protection one after another;

(ii) For an industrial design registration application, the evaluation shall be carried out for designs of different products one after another (if the application mentions a set of products). In case more than one plan are mentioned in the application, such plans shall be evaluated one after another, starting from the basic plan (the first plan stated in the application);

(iii) For a mark registration application, the evaluation shall be carried out for elements of the mark one after another for each goods or service on the list of goods and services.

c/ Substantive examination of each subject matter specified at Point b of this Clause shall be completed when the evaluation of such subject matter has been carried out under all protection conditions and there are sufficient grounds to conclude that such subject matter fails to satisfy or satisfies protection conditions, specifically as follows:

(i) A reason is found to conclude that the subject matter fails to satisfy one or several or all of protection conditions; or,

(ii) No reason is found to conclude that the subject matter fails to satisfy at least one of protection conditions.

d/ Before issuing a notice of results of substantive examination with the intent to grant a protection title under Points c, d and e, Clause 8, Article 16; Points c, d and e, Clause 10, Article 23; and Points c and d, and Item (ii), Point e, Clause 13, Article 26 of this Circular, the Intellectual Property Office of Vietnam shall check the first-to-file principle under Clause 7, Article 16; Clause 9, Article 23; and Clause 2, Article 26, of this Circular.

dd/ A notice of results of substantive examination with the intent to grant a protection title specified at Points c, d and e, Clause 8, Article 16; Points c, d and e, Clause 10, Article 23; Points c and d, and Item (ii), Point e, Clause 13, Article 26; and Point b, Clause 7, Article 30, of this Circular shall be issued for:

(i) An application not falling into the case specified in Article 90 of the Law on Intellectual Property;

(ii) An application with the earliest filing date or priority date among invention registration applications falling into the case specified in Clause 1, Article 90 of the Law on Intellectual Property;

(iii) An application with the earliest filing date or priority date among industrial design registration applications falling into the case specified in Clause 1, Article 90 of the Law on Intellectual Property;

(iv) An application with the earliest filing date or priority date among mark registration applications falling into the case specified in Clause 2, Article 90 of the Law on Intellectual Property;

(v) An application filed under an agreement specified in Clause 3, Article 90 of the Law on Intellectual Property.

e/ An application not falling into the case specified at Point dd of this Clause shall be processed as follows:

(i) It shall be refused for grant of a protection title for its failure to adhere to the first-to-file principle, if it has the earliest filing date or priority date eligible for grant of a protection title; or,

(ii) It shall be regarded as an application with the earliest filing date or priority date and processed like in the cases specified at Point dd of this Clause, if all applications with earlier filing or priority dates are refused for grant of protection titles or withdrawn or regarded as withdrawn.

3. In the course of substantive examination of an application, if such application has not yet fully disclosed the nature of the subject matter, the Intellectual Property Office of Vietnam may issue a notice requesting the applicant to explain the application's contents and provide information pertaining to the nature of the subject matter stated in the

application in order to fully disclose the nature of such subject matter, and set a time limit of 3 months from the date of notice issuance for the applicant to do so.

4. Time limit for substantive examination of applications:

a/ The time limit for substantive examination of applications must comply with Clause 2, Article 119 of the Law on Intellectual Property;

b/ A period for an applicant to respond to the Intellectual Property Office of Vietnam's notices specified in Clause 8, Article 16; Clause 10, Article 23; Clause 13, Article 26; and Clause 7, Article 30, of this Circular shall not be counted into the time limit for substantive examination. Such a period is construed as:

(i) A period from the date of notice issuance to the date the applicant responds to the notice; or,

(ii) A time limit set in the notice (even the case of its extension specified in Clause 2, Article 15 of Decree No. 65/2023/ND-CP), in case the applicant fails to respond to the notice.

c/ In case an applicant requests modification or supplementation of its/his/her application or responds to the Intellectual Property Office of Vietnam's notice specified in Clause 8, Article 16; Clause 10, Article 23; Clause 13, Article 26; or Clause 7, Article 30, of this Circular, the time limit for substantive examination may be extended for a period corresponding to the time limit for processing the request for application modification or supplementation or based on the applicant's explanation under Clause 4, Article 119 of the Law on Intellectual Property, specifically as follows:

(i) No more than 6 months, for inventions;

(ii) No more than 3 months, for marks;

(iii) No more than 2 months and 10 days, for industrial designs;

(iv) No more than 2 months, for geographical indications.

5. Before the expiration of the time limit for substantive examination of applications specified in Clause 4 of this Article, the Intellectual Property Office of Vietnam shall send to applicants one of the notices specified in Clause 8, Article 16; Clause 10, Article 23; Clause 13, Article 26; and Clause 7, Article 30, of this Circular.

**Article 13. Re-examination**

1. Re-examination of industrial property registration applications by the Intellectual Property Office of Vietnam is as follows:

a/ Re-examination of an application when there is an objection after a notice of results of substantive examination thereof is issued under Clause 2, Article 118 of the Law on Intellectual Property shall be carried out when the following conditions are satisfied:

(i) The applicant submits to the Intellectual Property Office of Vietnam its/his/her written opinions during the period from the date of issuance of the notice of results of

substantive examination to the date before the date of issuance of a decision to grant or refuse to grant a protection title; or a third party makes a written objection to the intent to grant a protection title stated in the notice of results of substantive examination together with adequate evidence proving that it is impossible to make such objection within the time limit specified in Article 112a of the Law on Intellectual Property due to a *force majeure* event or an external obstacle;

(ii) Opinions or objection specified at Item (i) of this Point are/is well grounded and accompanied with evidence or indications to reliable information sources;

(iii) Arguments and evidence to prove opinions specified at Item (i) of this Point must be different from those (if any) previously invoked, or have not been considered by the Intellectual Property Office of Vietnam under Clauses 1, 2 and 3, Article 11 of this Circular even though they are not different from previously invoked ones.

b/ Re-examination of an application shall be carried out when there is a request for application modification or supplementation after a notice of results of substantive examination is issued, clearly stating the intent to grant a protection title under Point c, Clause 3, Article 16 of Decree No. 65/2023/ND-CP;

c/ Re-examination of a mark registration application shall be carried out when there is a request for recognition of the change of the applicant due to the transfer of such application filed after a notice of results of substantive examination is issued with the intent to grant a protection title under Point c, Clause 2, Article 18 of Decree No. 65/2023/ND-CP;

d/ Re-examination of an application shall be carried out when the protection title holder requests modification of the description or narrowing of the scope of protection of industrial property rights under Point b, Clause 1, and Clause 3, Article 97 of the Law on Intellectual Property according to procedures for modification of protection titles specified at Point b, Clause 5, Article 29 of Decree No. 65/2023/ND-CP;

dd/ Re-examination of an application shall be carried out when there is a request for invalidation of a protection title under Point a, Clause 3, Article 32 of Decree No. 65/2023/ND-CP;

e/ Re-examination of an application shall be carried out when there is a complaint about the application-related decisions and notices under Clause 4, and Point b, Clause 6, Article 38 of this Circular.

## 2. Re-examination of applications:

a/ Time limit for re-examination of applications is provided in Clause 3, Article 119 of the Law on Intellectual Property, specifically as follows:

(i) No more than 12 months, for inventions;

(ii) No more than 6 months, for marks;

(iii) No more than 4 months and 20 days, for industrial designs;

(iv) No more than 4 months, for geographical indications.

For complicated cases and matters involving circumstances that need to be verified or solicit expert opinions, the time limit for re-examination may be extended but must not exceed the time limit for initial examination specified in Clause 2, Article 119 of the Law on Intellectual Property.

b/ Contents subject to re-examination are those specified in Clause 2, Article 12 of this Circular;

c/ Procedures for re-examination are those specified in Clause 8, Article 16; Clause 10, Article 23; Clause 13, Article 26; and Clause 7, Article 30, of this Circular, except the cases specified at Points dd and e, Clause 1 of this Article;

d/ For each case specified in Clause 1 of this Article, the re-examination of an application may be carried out only once for the applicant and each third party.

## Section 2

### INVENTION REGISTRATION APPLICATIONS AND PROCESSING THEREOF

#### **Article 14.** Requirements for invention registration applications

1. Invention registration applications shall be made under Articles 100 and 102 of the Law on Intellectual Property, Article 48 of and Appendix I to Decree No. 65/2023/ND-CP, and this Article.

2. Invention registration applications must ensure their uniformity under Clauses 1 and 2, Article 101 of the Law on Intellectual Property. A group of inventions will be regarded as being technically linked to form a single common inventive idea under Clause 2, Article 101 of the Law on Intellectual Property if falling into the following cases:

a/ One subject matter is used to create (produce, manufacture or prepare) another subject matter;

b/ One subject matter is used to realize another subject matter;

c/ One subject matter is used to utilize another subject matter;

d/ All subject matters are of the same type and share the same function(s) to ensure the obtainment of the same result.

3. For inventions on or related to biological materials that cannot be described or cannot be adequately described to the extent such inventions may be realized by persons with average knowledge about the field of biotechnology under Clause 2, Article 102 of the Law on Intellectual Property, applicants may deposit biological material samples to serve substantive examination of relevant inventions. The deposit of a biological material sample must satisfy the following requirements:

b/ Such biological material sample is deposited at the biological material depository authority no later than the filing date of the invention registration application related to such biological material;



b/ The biological material depository authority is a Vietnam-based authority or an overseas authority being on the list of international depository authorities under the Budapest Treaty or having its biological material deposit function accredited by the Ministry of Science and Technology for performance of invention-related procedures;

c/ For a biological material sample deposited at an overseas depository authority, if deeming it necessary to clarify the nature of the subject matter requested for protection or to respond a third party's request for access to such subject matter, the Intellectual Property Office of Vietnam may:

(i) Request the applicant to deposit an additional biological material sample at a Vietnam-based depository authority in case such biological material sample is not deposited at an international depository authority under the Budapest Treaty;

(ii) Request the biological material sample depository authority to provide the biological material sample in case such sample has been deposited at an international depository authority under the Budapest Treaty.

4. For registration applications for inventions that are directly created on the basis of genetic resources or traditional knowledge, if applicants fail to submit supporting documents on the origin of genetic resources or traditional knowledge to which invention authors or applicants have got access under Point dd1, Clause 1, Article 100 of the Law on Intellectual Property for the reason that they are unable to identify the origin of genetic resources or traditional knowledge, they shall clearly declare such and take responsibility for the truthfulness of their declaration.

5. In case there are grounds (information or evidence) to doubt the reliability of information provided in an application or in case the information provided in such application is unclear, the Intellectual Property Office of Vietnam shall issue a notice requesting the applicant to submit documents to verify or clarify such information within 2 months from the date of notice issuance. Such documents may be documents certifying the lawful registration right in case the applicant inherits or takes over the filing right from another party (documents proving the inheritance right specified by the civil law, documents proving the transfer of the filing right, job assignment contract or labor contract, etc.); documents showing results of trial use of a drug on humans, animals or plants as stated in the description (if the subject matter requested for protection is a pharmaceutical for use for humans, animals or plants), etc.

**Article 15.** Formal examination and publication of invention registration applications

The formal examination and publication of invention registration applications must comply with the general procedures specified in Articles 9 and 10 of this Circular.

**Article 16.** Substantive examination of invention registration applications

1. Applicants may request the Intellectual Property Office of Vietnam to carry out substantive examination of their invention registration applications under Article 113 of the Law on Intellectual Property, specifically as follows:

a/ Requests for substantive examination of invention registration applications shall be made according to the form provided in Appendix I to Decree No. 65/2023/ND-CP or shown in declaration forms of invention registration applications (if such requests are made upon the filing of applications);

b/ The time limit for submitting requests for substantive examination of invention registration applications must comply with Article 113 of the Law on Intellectual Property;

c/ Applicants shall pay charges for search and substantive examination under regulations. For applicants that fail to fully pay the law-specified charges and fees, their requests for substantive examination will be considered invalid and the Intellectual Property Office of Vietnam shall refuse to carry out substantive examination of applications.

A request for substantive examination of an invention registration application submitted after the application is published shall be published on the Industrial Property Official Gazette in the second month after it is received. A request for substantive examination of an invention registration application submitted before the application is published shall be published together with such application.

2. The Intellectual Property Office of Vietnam shall carry out substantive examination of invention registration applications according to the general procedures specified in Article 12 of this Circular and Clauses 3 thru 9 of this Article.

3. Evaluation of conformity of subject matters stated in applications with types of invention protection titles:

a/ A subject matter stated in an invention registration application will be considered unconformable with the type of invention protection title to be granted (invention patent or utility solution patent) if such subject matter is not a technical solution, specifically not a product or process. The method of identifying technical solutions is provided at Point b of this Clause;

b/ A technical solution - a subject matter eligible for protection as an invention - means a collection of necessary and sufficient information on technical methods and/or technical means (application of natural laws) to solve a given task (problem). A technical solution may take one of the following forms:

(i) A tangible product, e.g., a tool, machine, equipment, component, electric circuit, etc., displayed in the form of a collection of information determining an artificial product characterized by technical features (characteristics) in terms of structure and that such product has the function (utility) as a means to meet certain needs of humans; or a product in the form of a substance (single substance, compound or mixture of substances), e.g., material, raw material, foodstuff, pharmaceutical, etc., displayed in the form of a collection of information determining an artificial product characterized by technical features (characteristics) in terms of presence, proportion and state of elements and having the function (utility) as a means to meet certain needs of humans; or a product in the form of

biological material, e.g., gene, genetically modified plant/animal, etc., displayed in the form of a collection of information on a product containing genetic information modified by humans and capable of self-regeneration;

(ii) A process (technological process; method of diagnosis, forecasting, testing or processing, etc.) displayed in the form of a collection of information determining how to perform a specific process or job characterized by features (characteristics) in terms of sequence, conditions, composition, measure and means to perform manipulations so as to achieve a certain purpose.

c/ A subject matter stated in an application will not be regarded as a technical solution in the following cases:

(i) The subject matter is merely an idea or a scheme that only raises (poses) a problem but does not give the way how to solve it and does not answer the question(s) “how?” or/and “by what means?”;

(ii) The problem (task) raised for solution is not a technical problem and cannot be technically solved;

(iii) The subject matter is a natural product but not a product created by humans.

4. Evaluation of susceptibility of industrial application under Article 62 of the Law on Intellectual Property:

a/ A technical solution stated in an application will be considered “susceptible of realization” if:

(i) Information on such solution’s nature and indications on necessary technical conditions is presented so clearly and adequately that persons with average knowledge in the relevant art can create, manufacture, use, utilize or realize such solution;

(ii) The creation, manufacture, use, utilization or realization of such solution is repeated with the same results identical to one another and identical to those stated in the invention description.

b/ A technical solution will be considered unsusceptible of industrial application in the following cases:

(i) Its nature or indications to realize is/are contrary to basic scientific principles (for example, not adherence to the principle of energy conservation, etc.);

(ii) It consists of elements or components that are not technically linked with one another or cannot be interrelated (connected, binding, dependent, etc.);

(iii) It contains inherent contradiction(s);

(iv) Instructions about the solution can only be realized in a limited number of times (cannot be repeated);

(v) In order to realize the solution, a person must have special skills which cannot be handed down or shown to others;

- (vi) Results achieved from different times of realization are not identical;
- (vii) Achieved results are different from those stated in the application;
- (viii) No instructions are provided or there lack the most important instructions to realize the solution;
- (ix) Other cases with grounded reasons.

5. Evaluation of novelty under Article 60 of the Law on Intellectual Property:

a/ To evaluate novelty of a technical solution stated in an application, information search shall be performed in at least (but not limited to) the following compulsory sources:

(i) All invention registration applications already received by the Intellectual Property Office of Vietnam and having the same taxonomy as that of the subject matter stated in the application being examined - taking into account the layering indicator (third-rank indicator) and having the priority date or filing date earlier than that of the application being examined, except applications not published or not to be published;

(ii) Invention registration applications or invention protection titles published by other organizations or countries within 25 years counted to the filing date or priority date of the application being examined (if it is entitled to the priority right) as stored in the invention database of the Intellectual Property Office of Vietnam and other information sources designated by the Intellectual Property Office of Vietnam, within the scope of search specified at Item (i) of this Point.

When necessary and possible, the search may be extended to the national science and technology database and other accessible information sources, including also information sources on the Internet.

b/ The purpose of information search is to find a technical solution with nature similar or identical to that of the technical solution stated in the application. At this Point:

(i) Two technical solutions will be considered identical when having all their basic features (characteristics) identical or equivalent (interchangeable);

(ii) Two technical solutions will be considered similar when having most of their basic features (characteristics) identical or equivalent (interchangeable);

(iii) “Reference technical solution” means a technical solution identical or most similar to the technical solution stated in the application;

(iv) “Reference document” means a document describing a reference technical solution or providing evidence that a reference technical solution has been publicly disclosed.

c/ Information search results shall be shown in a search report, clearly stating the art subject to the search, scope of search and search results within such scope (statistics of reference technical solutions found, clearly indicating identical features, titles of reference

documents, number of pages and lines, source of documents, date of publication of relevant documents) and full name of the report maker (searcher).

d/ In order to evaluate the novelty of the technical solution stated in the application, it is required to compare basic features (characteristics) of such technical solution with those of reference technical solutions found during information search, in which:

(i) Basic technical features of the technical solution may be characteristics of the object's structure (details, assemblies of details, linkages, etc.) or composition of the substance (ingredients (presence, proportion), state of components, etc.) that, together with other basic technical features, form a collection of necessary and sufficient conditions to determine the nature (contents) of the subject matter.

The above basic technical features may be shown as a technical function of one component in the structure or configuration of the product (functional features) in such a way that enables persons with average knowledge in the relevant art to easily perceive the technical means or technical method to perform such function under normal conditions without having to have inventiveness. Functions and utilities of the subject matter requested for protection are not basic technical features but may be purposes and results achieved by such subject matter;

(ii) Basic technical features of the technical solution stated in the application or protection title shall be shown in the scope of (request for) invention protection, the description or drawings;

(iii) Basic technical features of the technical solution stated in other documents shall be shown and found based on descriptive documents or in the form of practical presentation of such technical solution.

dd/ In order not to be regarded as having lost the novelty of their inventions published in exceptional cases specified in Clauses 3 and 4, Article 60 of the Law on Intellectual Property, applicants shall submit documents related to the publication to prove their satisfaction of conditions for being entitled to exceptions. The above documents shall be submitted together with applications or additionally submitted under regulations on application modification or supplementation.

e/ Corresponding to every point in the scope of (request for) protection, a technical solution stated in an application will be considered novel in the relevant art around the world if:

(i) No reference technical solution is found during information search; or,

(ii) A reference technical solution is found but the technical solution stated in the application has at least one basic technical feature not present in the reference technical solution (and such feature is referred to as different basic feature).

6. Evaluation of inventive step under Article 61 of the Law on Intellectual Property:

a/ Upon the evaluation of inventive step of a technical solution, information search shall be performed in at least (but not limited to) compulsory sources specified at Point a, Clause 5 of this Article (except applications not yet published by the priority date or filing date of the application being examined);

b/ The evaluation of inventive step of a technical solution stated in an application shall be carried out by evaluating different basic feature(s) mentioned in the scope of (request for) protection in order to make a conclusion on:

(i) Whether or not such different basic feature(s) is/are regarded as having been disclosed in the compulsory information sources; and,

(ii) Whether or not a collection of different basic features is regarded as being obvious to persons with average knowledge in the relevant art.

Corresponding to every point in the scope of (request for) protection, a technical solution will be regarded as having inventive step if the inclusion of different basic technical feature(s) in the collection of basic technical features of such technical solution is the result of inventive activities and not an obvious result of average knowledge in the relevant art.

c/ In (but not limited to) the following cases, corresponding to every point in the scope of protection, a technical solution will be regarded as having no inventive step if:

(i) The collection of different basic technical features is obvious (any person with average knowledge in the relevant art can know that to perform the given function or to achieve the given purpose, it is inevitable to use such collection of features and *vice versa* when such collection of features is used, it is inevitable that the given purpose will be achieved or the given function will be performed);

(ii) The collection of different basic technical features has been disclosed in an identical or equivalent form in one or more than one known technical solution in compulsory minimum information sources; specifically, two features will be considered identical if they have the same nature or will be considered equivalent if they have a similar nature and share the same purpose and methods of achieving such purpose are basically the same;

(iii) Such technical solution is a simple combination of known technical solutions with functions, purposes and effects also being a simple combination of functions, purposes and effects of each known technical solution.

7. For invention registration applications already concluded as satisfying protection conditions, the Intellectual Property Office of Vietnam shall, before issuing notices of substantive examination results with the intent to grant invention patents or utility solution patents under Points c, d and e, Clause 8 of this Article, check to ensure adherence to the first-to-file principle specified in Clause 3, Article 90 of the Law on Intellectual Property.

8. Before the expiration of the time limit for substantive examination of applications specified in Clause 4, Article 12 of this Circular, the Intellectual Property Office of Vietnam shall perform the following tasks:

a/ If a subject matter requested for protection stated in an application fails to satisfy protection conditions or falls into one of the cases specified in Article 117 of the Law on Intellectual Property or satisfies protection conditions but the application still contains errors, the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, clearly stating the intent to refuse to grant a protection title, reason for the refusal or errors in the application, and may guide the modification of the scope (volume) of protection, and set a time limit of 3 months from the date of notice issuance for the applicant to make an objection;

b/ Within 15 days after the expiration of the time limit specified at Point a of this Clause, if the applicant fails to correct errors or unsatisfactorily does so or makes no objection or makes a groundless objection, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a protection title.

c/ If a subject matter requested for protection stated in an application satisfies part of protection conditions based on points requested for protection, the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, clearly stating the intent to grant a protection title for the part of such subject matter that satisfies protection conditions, provided that the applicant satisfactorily modifies the application, and the reason for refusal to grant a protection title for the part of such subject matter that does not satisfy protection conditions, and set a time limit of 3 months from the date of notice issuance for the applicant to make a written consent and modify the application or make an objection to substantive examination results.

d/ If a subject matter requested for protection stated in an application satisfies protection conditions or an applicant has satisfactorily corrected errors or made grounded explanations about substantive examination results and/or satisfactorily modified the application under Points a and c of this Clause, the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, clearly stating the intent to grant a protection title for the whole or part of the subject matter that satisfies protection conditions, and set a time limit of 3 months from the date of notice issuance for the applicant to pay the fee for grant of a protection title, the charge for publication of the decision to grant a protection title, the charge for recording the decision to grant a protection title in the register, the fee for protection title validity maintenance, and the charge for use of the protection title for the first year, for inventions.

dd/ Within 15 days after the expiration of the time limit specified at Point c of this Clause, if an applicant fails to modify the application or makes no objection, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a protection title.

e/ Upon the expiration of the time limit specified at Point c of this Clause, if an applicant unsatisfactorily modifies the application or makes a groundless objection, the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, clearly stating the intent to grant a protection title for the part of the subject matter that satisfies protection conditions, provided that the applicant satisfactorily modifies the application, and set a time limit of 3 months from the date of notice issuance for the applicant to modify the application.

If the applicant has satisfactorily modified the application, within 3 months from the date of modification, the Intellectual Property Office of Vietnam shall issue to the applicant a notice of the intent to grant a protection title and the payment of the fee for grant of a protection title, the charge for publication of the decision to grant a protection title, the charge for recording the decision to grant a protection title in the register, the fee for protection title validity maintenance, and the charge for use of the protection title for the first year, for inventions, and set a time limit of 3 months from the date of notice issuance for the applicant to pay such charges and fees.

g/ If an applicant unsatisfactorily modifies the application, fails to modify the application or fails to fully pay the fee for grant of a protection title, the charge for publication of the decision to grant a protection title and the charge for recording the decision to grant a protection title in the register within the time limits specified at Points d and e of this Clause, within 3 months after the expiration of the respective time limit, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a protection title.

h/ For the cases specified at Points d and e of this Clause, if an applicant has fully and timely paid charges and fees under regulations, within 15 days after the expiration of the respective time limit, the Intellectual Property Office of Vietnam shall issue a decision to grant a protection title. If the applicant has fully paid the fee for grant of a protection title, the charge for publication of the decision to grant a protection title and the charge for recording the decision to grant a protection title in the register within the set time limit but fails to pay the fee for validity maintenance and the charge for use of the protection title for the first year for the invention patent or utility solution patent, such protection title may still be granted but shall be invalidated right after its grant.

9. Use of information search results and results of examination of invention registration applications of foreign patent offices:

a/ In the course of substantive examination of an invention registration application, the Intellectual Property Office of Vietnam may refer to information search results and examination results for such application filed overseas;

b/ Search and examination results specified at Point a of this Clause include one of the following documents:

(i) Search report, examination report, and notice of examination results;



(ii) Publication of the invention patent or protection title.

c/ Before the Intellectual Property Office of Vietnam issues a notice of substantive examination results, an applicant may request the former to use substantive examination results of an invention registration application filed overseas in order to evaluate the protectability, if the following conditions are satisfied:

(i) Substantive examination results in the documents specified at Items (i) and (ii), Point b of this Clause are issued by agencies on the list approved by the Minister of Science and Technology at the proposal of the Intellectual Property Office of Vietnam;

(ii) Among substantive examination results of the aforesaid invention application filed overseas, at least one point requested for protection has been evaluated as satisfying protection conditions;

(iii) Initial or modified points requested for protection of the application filed in Vietnam are identical to those evaluated as satisfying protection conditions stated in substantive examination results of the aforesaid invention application filed overseas;

(iv) The applicant submits the following documents to the Intellectual Property Office of Vietnam: a request for use of examination results of the foreign patent office, made according to the form provided in the Appendix to this Circular; copies of examination results; translations of examination results (if required); points requested for protection evaluated by the foreign patent office as satisfying protection conditions and translations thereof (if required); documents referred to in the results of the application processing by the foreign patent office (if required); the modified description and detailed explanation about modified and supplemented contents of the submitted description (in case of modification); and the law-specified charges.

d/ In case the conditions specified at Point c of this Clause are satisfied, an applicant's request for use of substantive examination results of a foreign patent office shall be accepted and the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results of the application within 12 months after receiving the request.

Within the aforesaid time limit of 12 months, if the procedures for modification and supplementation of an invention registration application make one of the conditions specified at Point c of this Clause no longer satisfied, such invention registration application shall be examined according to common procedures.

dd/ In case one the conditions specified at Point c of this Clause is not satisfied, the Intellectual Property Office of Vietnam shall issue a notice of its refusal of the request for use of examination results of a foreign patent office and the invention registration application shall be examined according to common procedures.

### Section 3

## LAYOUT DESIGN REGISTRATION APPLICATIONS AND PROCESSING THEREOF

### **Article 17.** Requirements for layout design registration applications

1. A layout design registration application must meet the requirements specified in Articles 100, 101 and 104 of the Law on Intellectual Property, Appendix I to Decree No. 65/2023/ND-CP, and this Article.

2. In case there are grounds (information or evidence) to doubt the reliability of the information stated in a layout design registration application or in case the information stated in a layout design registration application is not clear, the Intellectual Property Office of Vietnam shall issue a notice requesting the applicant to submit documents for verifying or clarifying such information within 2 months from the date of notice issuance. The above documents may be documents certifying the lawful registration right, if the applicant inherits or takes over the filing right from another person (document proving the inheritance right, document proving the transfer of the filing right; job assignment contract or labor contract), etc.

**Article 18.** Confidentiality of information in layout design registration applications

The Intellectual Property Office of Vietnam is obliged to keep confidential the information stated in layout design registration applications as requested by applicants as specified in Appendix I to Decree No. 65/2023/ND-CP.

**Article 19.** Formal examination of layout design registration applications

1. Formal examination of layout design registration applications must comply with the general provisions of Clauses 1, 2, 3, 4 and 8, Article 9 of this Circular and this Article's provisions exclusively applicable to layout design registration applications.

2. Notification of results of formal examination of layout design registration applications:

a/ If an application falls into one of the cases specified in Clause 2, Article 9 of this Circular, the Intellectual Property Office of Vietnam shall carry out the procedures specified at Point a, Clause 5, Article 9 of this Circular.

b/ If the application is valid, the Intellectual Property Office of Vietnam shall send to the applicant a notice of intent to grant a layout design registration certificate and set a time limit of 3 months from the date of notice issuance for the applicant to pay charges and fees under regulations.

3. In case an applicant has received from the Intellectual Property Office of Vietnam a notice of formal examination results, which indicates the application's errors and the Office's intent to refuse to accept the application under Point a, Clause 5, Article 9 of this Circular, but the applicant fails to correct such errors or unsatisfactorily does so or makes no objection or makes a groundless objection within the set time limit or fails to fully pay charges and fees for grant of a layout design registration certificate under regulations, the Intellectual Property Office of Vietnam shall issue a decision on refusal to issue a layout design registration certificate and send it to the applicant.

**Article 20.** Publication of layout design registration applications

1. A layout design registration application already accepted as valid shall be published under Clause 4, Article 110 of the Law on Intellectual Property.

2. Access to detailed information about valid layout design registration applications

a/ From the date a layout design registration application is published, everyone may get access to detailed information on the nature of the layout design stated in the published application, except confidential information specified in Article 18 of this Circular.

b/ Only agencies competent to carry out procedures for invalidation of protection titles or carry out procedures for handling infringements of rights to layout designs may access confidential information on layout designs.

#### Section 4

### INDUSTRIAL DESIGN REGISTRATION APPLICATIONS AND PROCESSING THEREOF

#### **Article 21.** Requirements for industrial design registration applications

1. An industrial design registration application must meet the general requirements specified in Articles 100 and 103 of the Law on Intellectual Property, Appendix I to Decree No. 65/2023/ND-CP, and this Article.

2. An industrial design registration application must ensure the uniformity specified in Clauses 1 and 3, Article 101 of the Law on Intellectual Property. In case an application for protection of one industrial design of one product or part thereof to be assembled into a complex product is accompanied by one or more than one variant of such industrial design, variant(s) of one industrial design must be neither significantly different from the basic variant nor significantly different from one another.

Specifically, products are understood as objects, tools, equipment or means that are manufactured by industrial or manual method and have a clear structure and functions; parts to be assembled into complex products are those capable of being independently circulated and removable from complex products; and complex products are those made up of multiple replaceable parts that can be removed and reassembled. Products and parts to be assembled and combined into complex products are below collectively referred to as products, except those governed by separate regulations.

3. In case there are grounds (information or evidence) to doubt the reliability of the information stated in a layout design registration application or the information stated in a layout design registration application is not clear, the Intellectual Property Office of Vietnam shall issue a notice requesting the applicant to submit documents for verifying or clarifying such information within 2 months from the date of notice issuance. The above-mentioned documents may be documents certifying the lawful registration right if the applicant inherits or takes over the filing right from another person (document proving the right to inheritance, document proving the transfer of the filing right; job assignment contract or labor contract, etc.).

4. Appearance features of industrial designs are understood as follows:

a/ Appearance features of an industrial design are elements expressed in the form of line, shape, color, position correlation or dimensional correlation so that, when combined with other features (signs), they form such industrial design;

b/ Basic appearance features are appearance features that are easily identifiable/memorizable, necessary and sufficient to determine the nature of an industrial design and distinguish an industrial design from another used for products of the same type.

Products of the same type are products whose use purposes or functions are identical or similar to one another. Complex products and parts to be assembled into complex products are products of different types.

c/ The following elements are not considered basic appearance features of an industrial design:

(i) Shape or line that is determined by the technical functions of the product itself (e.g., the flattened shape of a data disk is determined by the relative movement between the disk and the disk reader, etc.);

(ii) An element whose presence in the collection of signs is not enough to create aesthetic impression (the impression of the appearance of the product does not change when such element is present or absent; for example, a change in a familiar shape or line is not enough for being identifiable, therefore, the changed shape or line remains being recognized as the old one);

(iii) Materials used to manufacture products;

(iv) Signs attached, affixed, etc., to a product only to perform the function of providing information or instructions on the origin, characteristics, structure, utilities, etc., of such product, for example, information on labels (such as manufacturer, trade indications, origin, barcodes, etc.), marks, geographical indications, etc.;

(v) Size of a product, except the case of change of decorative dimensions of similar fabrics and materials;

(vi) Appearance features of a product that are not visible during the utilization of the product (for the industrial design of the product) or of a complex product (for the industrial design of parts assembled into a complex product);

(vii) Other elements that do not satisfy the condition specified at Point b of this Clause.

**Article 22.** Formal examination and publication of industrial design registration applications

Formal examination and publication of industrial design registration applications must comply with the general procedures specified in Articles 9 and 10 of this Circular.

**Article 23.** Substantive examination of industrial design registration applications

1. Substantive examination of industrial design registration applications must comply with the general procedures specified in Article 12 of this Circular and this Article.

2. A subject matter stated in an industrial design registration application is considered unconfordable with the type of the industrial design protection title if:

a/ It is not the appearance of the product. The appearance of a product is the collection of appearance features (shape, line, color or combinations thereof) that are visible during the utilization of a product (for the industrial design of the product) or of a complex product (for the industrial design of parts to be assembled into a complex product). Specifically, utilization of products or complex products is understood as putting those products into use based on their functions and utilities, excluding maintenance, servicing or repair of such products or complex products.

b/ It is:

(i) The appearance of the product that is mandatory as required by technical specifications of the product;

(ii) The appearance of a civil or industrial construction work, except the appearance of individual modules or units that may be used independently or assembled together to form a construction work such as shop, kiosk, caravan or similar product.

3. Search for information:

a/ The purpose of the information search is to find, in the compulsory minimum information source, industrial designs that are identical or similar to industrial designs stated in industrial design registration applications.

b/ The compulsory minimum information source used during substantive examination of an industrial design registration application includes:

(i) Industrial design registration applications already received by the Intellectual Property Office of Vietnam and having their publication date earlier than the filing date or priority date of the application being examined (if the application is entitled to the priority right);

(ii) Industrial design registration applications and industrial design protection titles published by other organizations or countries within 25 years prior to the filing date or priority date of the application being examined (if the application is entitled to the priority right), and stored in the industrial design database available at the Intellectual Property Office of Vietnam;

(iii) Other information related to industrial designs that is collected and stored by the Intellectual Property Office of Vietnam;

(iv) Industrial design registration applications received by the Intellectual Property Office of Vietnam, industrial design international registration applications designating Vietnam and having their filing date or priority date (if the application is entitled to the

priority right) earlier than that of the application being examined (used to check the first-to-file principle mentioned in Clause 9 of this Article).

c/ When necessary and possible, the search may be expanded beyond the compulsory minimum information source, such as the national database on inventions and marks and other accessible information sources.

4. Search results shall be shown in search reports which must clearly state the field and scope of search and search results within that scope (listing statistics and specifying reference industrial designs found, information source, and date of information disclosure), and must state the full name of the report maker (searcher).

Specifically, “reference industrial design” means an industrial design that is identical or similar to the industrial design stated in the application, and compared with the industrial design stated in the application when evaluating novelty and creativity.

5. Evaluation of distinctness of industrial designs:

a/ Two industrial designs are considered identical when they are used for products of the same type and share the same collection of basic and non-basic appearance features;

b/ Two industrial designs are considered not significantly different from each other when they are used for products of the same type and share the same collection of basic appearance features;

c/ Two industrial designs are considered similar when they are used for products of the same type and have at least one basic appearance feature that is identical to or not significantly different from each other;

d/ Two industrial designs among similar industrial designs are considered the most similar when they share the most basic appearance features that are identical to or not significantly different from each other as compared to all other similar industrial designs;

dd/ Two industrial designs are considered significantly different from each other when they are used for products of different types or used for products of the same type but have at least one distinct basic appearance feature.

6. Evaluation of novelty of industrial designs under Article 65 of the Law on Intellectual Property:

a/ In order to evaluate novelty of an industrial design stated in an industrial design registration application, it is required to compare the collection of basic appearance features of such industrial design with the collection of basic appearance features of every reference industrial design found during the information search.

b/ An industrial design stated in an industrial design registration application is considered novel if:

(i) No reference industrial design is found in the compulsory minimum information source; or,

(ii) Though a reference industrial design is found in the compulsory minimum information source but the industrial design stated in the application is considered significantly different from the reference industrial design; or,

(iii) A reference industrial design is the industrial design stated in the application published or disclosed in one of the cases specified in Clauses 3 and 4, Article 65 of the Law on Intellectual Property.

7. Evaluation of creativity of industrial designs under Article 66 of the Law on Intellectual Property:

a/ In order to evaluate creativity of an industrial design stated in an industrial design registration application, it is required to compare the collection of basic appearance features of such industrial design with the collection of basic appearance features of reference industrial designs found during the information search.

b/ In the following cases, an industrial design stated in an industrial design registration application will be considered not creative:

(i) It is the simple combination of known appearance features (publicly disclosed appearance features are simply arranged or assembled together such as substitution, position change, increase or decrease in number, etc.);

(ii) It is a shape that is a reproduced/simulated from part or the whole of the inherent natural appearance of trees, fruits, animals, etc., or the shape of known geometric shapes (circle, ellipse, triangle, square, rectangle, equilateral polygon, or prism having the above shapes as cross-sections, etc.);

(iii) It is the simple reproduction of the shape of products or works that are famous or known in Vietnam or in the world;

(iv) It simulates an industrial design in another art, if the simulation is known in reality (e.g., toys that simulate cars, motorcycles, etc.).

If not falling into one of the above cases, an industrial design is considered creative.

8. Evaluation of susceptibility of industrial application of industrial designs under Article 67 of the Law on Intellectual Property:

a/ An industrial design stated in an industrial design registration application is considered susceptible of industrial application if, based on information about the industrial design presented in the application, a person with average knowledge in the relevant art may use such industrial design as a prototype for manufacturing by industrial or manual method products with external appearance identical to such industrial design.

b/ In the following cases, a subject matter stated in an industrial design registration application is considered insusceptible of industrial application:

(i) It is the shape of products with an unstable state of existence (products in gaseous form, liquids, etc.);

(ii) It is possible to create a product shaped like it only by virtue of special skills or it is impossible to repeatedly manufacture a product shaped like it;

(iii) Other cases with grounded reasons.

9. For industrial design registration applications concluded to satisfy the protection conditions, the Intellectual Property Office of Vietnam shall, before issuing a notice of intent to grant an industrial design patent under Points c, d and e, Clause 10 of this Article, check whether the first-to-file principle is adhered to under Clauses 1 and 3, Article 90 of the Law on Intellectual Property under the following provisions:

a/ In order to check the first-to-file principle, it is required to search for information in the compulsory minimum information source specified at Item (iv), Point b, Clause 3 of this Article;

b/ The search is to find industrial design registration applications of products of the same type that are identical to or not significantly different from each other, or to find industrial design registration applications of complex products that contain parts with industrial designs identical to or not significantly different from the to-be-registered industrial design and to identify applications with the earliest filing date or priority date;

c/ If there are more than one application falling into the case specified at Point b of this Clause, an industrial design patent may only be granted for a valid application with the earliest filing date or priority date among the applications that satisfy the conditions for grant of a protection title.

d/ Among applications falling into the case specified at Point b of this Clause for products of the same type, if there are more than one application with the same earliest filing date or priority date, an industrial design patent may be granted for only one application among them as agreed upon by all applicants; if no agreement can be reached, all such applications will be rejected.

10. Before the expiration of the time limit for substantive examination of an industrial design registration application specified in Clause 4, Article 12 of this Circular, the Intellectual Property Office of Vietnam shall perform the following tasks:

a/ If the subject matter requested for protection stated in the application does not satisfy the protection conditions or falls into one of the cases specified in Article 117 of the Law on Intellectual Property or satisfies the protection conditions but the application still contains errors, the Intellectual Property Office of Vietnam shall issue a notice of results of the substantive examination, clearly stating the intent to refuse to grant a protection title, reason for refusal, or errors of the application, and may guide the modification of the scope (volume) of protection, and set a time limit of 3 months from the date of notice issuance for the applicant to make an objection;

b/ Within 15 days after the expiration of the time limit specified at Point a of this Clause, if the applicant fails to correct errors or unsatisfactorily does so or makes no



objection or makes a groundless objection, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a protection title.

c/ If the subject matter requested for protection stated in the application satisfies part of the protection conditions, the Intellectual Property Office of Vietnam shall issue a notice of results of the substantive examination, clearly stating the intent to grant a protection title for the part of the subject matter that satisfies the protection conditions provided that the applicant satisfactorily modifies the application, and stating the reason for refusal to grant a protection title for the part of the subject matter that does not satisfy the protection conditions, and set a time limit of 3 months from the date of notice issuance for the applicant to give written consent and make the modification of the application or make an objection to results of the substantive examination.

d/ If the subject matter requested for protection stated in the application satisfies the protection conditions or the applicant has satisfactorily corrected errors or makes grounded explanations about results of the substantive examination and/or satisfactorily modifies the application under Points a and c of this Clause, the Intellectual Property Office of Vietnam shall issue a notice of results of the substantive examination, stating the intent to grant a protection title for the whole or part of the subject matter that satisfies the protection conditions, and set a time limit of 3 months from the date of notice issuance for the applicant to pay the fee for grant of the protection title, the charge for publication of the decision on grant of the protection title, and the charge for recording the decision on grant of the protection title in the register.

dd/ Within 15 days after the expiration of the time limit specified at Point c of this Clause, if the applicant fails to modify the application or makes no objection, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a protection title.

e/ Upon the expiration of the time limit specified at Point c of this Clause, if the applicant unsatisfactorily modifies the application or makes a groundless objection, the Intellectual Property Office of Vietnam shall issue a notice of results of the substantive examination, clearly stating the intent to grant a protection title for the part of the subject matter that satisfies the protection conditions provided that the applicant satisfactorily modifies the application, and set a time limit of 3 months from the date of notice issuance for the applicant to modify the application.

In case the applicant has satisfactorily modified the application, within 2 months from the date of modification, the Intellectual Property Office of Vietnam shall issue a notice of payment of the fee for grant of the protection title, the charge for publication of the decision on grant of the protection title, and the charge for recording the decision on grant of the protection title in the register, and set a time limit of 3 months from the date of notice issuance for the applicant to pay.

g/ If the applicant unsatisfactorily modifies the application, fails to modify the application or fails to fully pay the fee for grant of the protection title, the charge for

publication of the decision on grant of the protection title, and the charge for recording the decision on grant of the protection title in the register within the time limit specified at Points d and e of this Clause, within 2 months after the expiration of the respective time limit, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a protection title.

h/ For the cases specified at Points d and e of this Clause, if the applicant pays fully and on time charges and fees under regulations, within 15 days after the expiration of the respective time limit, the Intellectual Property Office of Vietnam shall issue a decision to grant a protection title.

## Section 5

### MARK REGISTRATION APPLICATIONS AND PROCESSING THEREOF

#### **Article 24.** Requirements for mark registration applications

1. A mark registration application must meet the general requirements on documents of an application specified in Articles 100 and 105 of the Law on Intellectual Property, Appendix I to Decree No. 65/2023/ND-CP, and this Article.

2. A mark registration application must ensure the uniformity specified in Clauses 1 and 4, Article 101 of the Law on Intellectual Property. For each application, the applicant may apply for registration of only one mark used for one or more than one goods or service.

3. In case there are grounds (information or evidence) to doubt the reliability of information stated in a mark registration application or information stated in a mark registration application is not clear, the Intellectual Property Office of Vietnam shall issue a notice to the applicant for the latter to submit documents for verifying or clarifying such information within 2 months from the date of notice issuance. The aforesaid documents may be:

a/ Documents proving the applicant's eligibility:

(i) Enterprise registration certificate, contract or another document certifying the applicant's manufacture of products or provision of services under Clause 1, Article 87 of the Law on Intellectual Property;

(ii) Agreement or document certifying that the manufacturer does not use the mark and does not object to the mark registration by the trader of the manufacturer's products under Clause 2, Article 87 of the Law on Intellectual Property;

(iii) Establishment decision or license and organization charter certifying functions and competence to manage collective marks, quality certification marks or geographical origin certification marks for goods or services under Clauses 3 and 4, Article 87 of the Law on Intellectual Property;

(iv) Agreement, business registration certificate or document related to the mark registration of co-owners under Clause 5, Article 87 of the Law on Intellectual Property;

(v) Document certifying that the applicant inherits or takes over the mark registration right from another person under Clause 6, Article 87 of the Law on Intellectual Property;

(vi) Agreement or written consent of the mark owner certifying the mark registration right of the representative or agent under Clause 7, Article 87 of the Law on Intellectual Property and Article 6<sup>septies</sup> the Paris Convention.

b/ Documents proving the applicant's representation status: the original power of attorney of the applicant; document certifying that the applicant's representative is the legal representative of the mark registration institution or a person authorized by that representative; and document certifying that the applicant's authorized person meets the requirements to act as the applicant's representative under Article 4 of this Circular;

c/ Documents proving the right to use or register marks containing special signs specified in Clauses 2, 4 and 7, Article 73, and at Point p, Clause 2, Article 74, of the Law on Intellectual Property; documents proving that the use of marks on trade indications, origin indications, awards or medals or typical symbols of a certain type of products does not mislead, confuse or deceive consumers;

d/ Documents proving the priority right;

dd/ Documents proving the control and certification functions of the certification mark registration institution;

e/ Information necessary to clarify or confirm contents stated in regulations on use of collective marks, regulations on use of certification marks or other documents of an application;

g/ Other documents appropriate to clarify the reliability of information stated in the application.

4. Organizations entitled to register collective marks under Clause 3, Article 87 of the Law on Intellectual Property include:

a/ Cooperative alliances; and cooperatives defined in the Law on Cooperatives, if their members carry out independent production and business activities;

b/ Associations as defined in the law on associations, if their members carry out independent production and business activities;

c/ Other lawfully established collective organizations each having 2 or more members, if their members carry out independent production and business activities and have their own goods or services.

5. An organization entitled to register certification marks under Clause 4, Article 87 of the Law on Intellectual Property is an organization with the function of controlling and certifying features (quality, origin, etc.) of goods and/or services bearing marks, an organization that carries out the above-mentioned control and certification activities by itself or assigns, hires or authorizes, etc., another organization to do so according to the

functions provided by law or as stated in the enterprise registration certificate, charter, establishment decision, task assignment decision, etc., of such organization.

6. Regulations on use of collective marks and regulations on use of certification marks must have the respective contents specified in Clauses 4 and 5, Article 105 of the Law on Intellectual Property. Applicants shall ensure that information stated in such regulations complies with relevant laws.

7. Documents proving the permission for an applicant to register a collective mark or certification mark containing a place name or another sign indicating the geographical origin of a Vietnamese local specialty under Clauses 3 and 4, Article 87 of the Law on Intellectual Property include a written permission for use in accordance with Point a and a map of the respective geographical area under Point b of this Clause.

a/ A written permission for use of a place name or another sign indicating the geographical origin of a local specialty for registration of a collective mark or certification mark containing such element, issued by:

(i) The provincial-level People's Committee of the locality where exists the geographical area corresponding to the place name or another sign indicating the geographical origin of the local specialty (in case the geographical area is situated in one locality);

(ii) All provincial-level People's Committees of localities where exists the geographical area corresponding to the place name or another sign indicating the geographical origin of the local specialty (in case the geographical area is situated in more than one locality).

b/ A map of a geographical area corresponding to a place name or another sign indicating the geographical origin of a local specialty must show sufficient information for enabling the accurate determination of such geographical area and shall be certified by a competent agency specified at Point a of this Clause.

8. Determination of place names or other signs indicating the geographical origin of products:

a/ The sign indicating the geographical origin of a product is a sign used for a local product and functions to indicate the geographical origin of the product (indicating that the product originates in that locality).

A sign indicating the geographic origin of a product is a place name or local symbolic sign (images of typical local objects, such as symbols, maps, flags, badges, scenic spots, special works, etc.), or any other sign.

A place name may be a current name or historical name or an official name or folk name of a geographic area that is being used as a substitute for the current or well-known place name (determined based on administrative boundaries or by geographical modalities).

b/ A place name or local symbolic sign used for ordinary products (other than specialties) might function or not function to indicate the geographical origin of such a product, depending on the product and the actual use of the place name or local symbolic sign.

c/ A place name or local symbolic sign will be considered functioning to indicate the geographical origin of a product in the following cases:

(i) It is used for local specialties (special products that earn reputation thanks to their certain characteristics and are locally produced);

(ii) It is used for local typical crops and livestock and products processed therefrom;

(iii) It is used for products exploited from local natural materials (coal, iron, steel, aluminum, cement, stone, salt, wood, etc.);

(iv) It is used for products in developed industries in localities;

(v) It is used for specific services (services that earn reputation associated with certain local characteristics);

(vi) Other cases, depending on products and the practical use of place names and local symbolic signs for products.

d/ A place name or local symbolic sign will be considered not functioning to indicate the geographical origin of a product in the following cases:

(i) It has been used as an ordinary mark and widely recognized, i.e., it has functioned to indicate the commercial origin (distinguishability) and lost the function of describing the geographical origin, e.g., Hanoi beer, Saigon beer;

(ii) The corresponding locality cannot be the place where the product is manufactured, e.g., Arctic tobacco, etc.

Place names and local symbolic signs not functioning to indicate the geographical origin of products may be protected like ordinary marks, without permission of local administrations.

dd/ Place names and local symbolic signs within the scope of well-known general geographical knowledge (for example: names of provinces and cities, landscapes and scenic spots) that are used for local ordinary products (even products for which a locality has business advantages but which earn no reputation or have no quality characteristics), used by many local business entities for their goods and services, functioning to describe the location of manufacture (but there are not sufficient grounds to classify them into the cases specified at Points c and d of this Clause), are signs ineligible for protection as marks but usable as a supplementary factor constituting ordinary marks of organizations and individuals in the respective locality, provided that such place names are excluded from the scope of protection (not separately protected) and not required to ask for permission from local administrations.

**Article 25. Formal examination and publication of mark registration applications**

1. Formal examination and publication of mark registration applications must comply with the general procedures specified in Articles 9 and 10 of this Circular.

2. Formal examination of certification mark and collective mark registration applications does not cover the evaluation of specific characteristics of goods and/or services certified by such marks, methods of evaluation of characteristics of goods and/or services and methods of controlling the use of marks, expenses payable by mark users for the mark certification and protection (if any), mark use conditions, and measures to handle violations of mark use regulations stated in such regulations.

**Article 26. Substantive examination of mark registration applications**

1. Substantive examination of mark registration applications must comply with the general procedures specified in Article 12 of this Circular and with this Article.

2. Evaluation of the conformity of a subject matter stated in a mark registration application with the request for a mark registration certificate:

a/ Under Clause 1, Article 72 of the Law on Intellectual Property, to be registered as a mark, a sign must be visible in the form of letter, numeral, word, drawing or image, including also hologram, or a combination of such elements that are expressed in one or several certain color(s) or audible signs that can be graphically represented.

b/ The following signs are ineligible for protection as marks:

(i) Signs that are merely colors but not combined with word signs (signs in the form of scripts or numerals) or figurative signs or those not expressed as work or figurative signs; or audible signs that cannot be graphically represented;

(ii) Signs that are ineligible for protection as marks specified in Article 73 of the Law on Intellectual Property;

(iii) Signs that are contrary to social ethics or public order or harmful to national defense and security specified in Article 8 of the Law on Intellectual Property.

3. Evaluation of the distinguishability of word signs under Clause 2, Article 74 of the Law on Intellectual Property:

Except the cases of exception specified in Clause 5 of this Article, the following word signs are considered indistinguishable:

a/ Characters of languages that are unrecognizable and unmemorizable by Vietnamese consumers with average knowledge (illegible, incomprehensible or unmemorizable), such as non-Latin characters: Arabic characters, Slavic characters, Sanskrit characters, Chinese characters, Japanese characters, Korean characters, Thai characters, etc., unless the characters of the above languages are accompanied by other components that constitute a combination of characters that are distinguishable or presented in graphic or another special form;

b/ A character of Latin origin but consisting of only one letter or consisting of only numerals or, though containing two letters but illegible as one word - even if accompanied by numerals, unless such signs are presented in graphic or other special form;

c/ A combination of too many letters or words making them unrecognizable and unmemorable, such as a sequence of too many characters not arranged in a definite order or rule or a text or a piece of text;

d/ A character of Latin origin that is a word whose meaning has been widely and commonly used in Vietnam in the relevant art to the extent that it loses indistinguishability;

dd/ A word or a collection of words used in Vietnam, such as usual names of relevant goods and/or services;

e/ A word or a collection of words with descriptions of goods and/or services bearing marks, such as signs giving instructions on time, place, manufacture method, type, quantity, quality, nature, composition, use and value of goods and/or services;

g/ A word or a collection of words with descriptions indicating the geographical origin of goods and/or services;

h/ A word or a collection of words with descriptions of the legal form and business field of the mark owner;

i/ Word signs identical or similar to one of the subject matters falling within the scope of intellectual property rights protection as specified at Points e, g, h, i, k, l, m, o and p, Clause 2, Article 74 of the Law on Intellectual Property.

4. Evaluation of distinguishability of figurative signs (including image signs, drawings, shapes, etc.) under Clause 2, Article 74 of the Law on Intellectual Property:

Except the cases of exception specified in Clause 5 of this Article, a figurative sign is considered indistinguishable if:

a/ It is a common shape such as circle, ellipse, triangle, quadrangle, etc., or a simple drawing; or a drawing or image used only as backgrounds or decorative lines of products or product packaging;

b/ It is too complicated, making it not easy for consumers to perceive and memorize its characteristics, e.g., it is composed of too many images and lines combined with or overlapped on one another;

c/ It is a drawing, image, symbol, symbolic sign or ordinary shape of goods or part of goods, ordinary shape of goods packaging or containers that have been regularly used and widely recognized;

d/ It describes the goods and/or services bearing marks, such as location, manufacture method, type, quantity, quality, nature, composition, use, value or other characteristics of goods and/or services bearing marks or signs that add a significant value to the goods;

dd/ It is a drawing or image describing the geographical origin of goods and/or services;

e/ It is identical to or not significantly different from another person's industrial design already or being under protection;

g/ It is identical or similar to the subject matter falling within the scope of intellectual property rights protection specified at Points e, g, h, i, l, m and p, Clause 2, Article 74 of the Law on Intellectual Property.

5. Applicable exceptions when evaluating the distinguishability of a word sign or figurative sign:

a/ A sign that falls into the case specified at Point a, b, c, e, or g, Clause 3 of this Article or Point a, b, d or dd, Clause 4 of this Article and has been and is being used as a mark and widely recognized by consumers as having become distinguishable with regard to the relevant goods or service before the filing date. To apply an exception mentioned in this Clause, the applicant shall provide evidence of the widespread use of such sign as a mark (the number of related consumers knowing the sign, the time when the sign is started to be used, and the scope and extent of use of the sign before the filing date, turnover from goods sold or services provided, etc.) to evidence that the sign is distinguishable with regard to the applicant's relevant goods or service. In this case, the sign must be used continuously and widely in lawful production, business, trade, advertising and marketing activities in the form shown in the mark registration application.

b/ A sign specified at Point g, Clause 3 or Point dd, Clause 4 of this Article that is registered as a mark certifying the geographical origin of a goods or service or as a collective mark.

6. Evaluation of the distinguishability of combined word-and-figurative signs (below referred to as "combined signs"):

A combined sign is considered distinguishable when the word sign and the figurative sign are combined into a distinguishable whole, specifically as follows:

a/ The word sign and figurative sign are both distinguishable and together form a distinguishable whole;

b/ The strong component of the mark (the element that has a strong effect on consumers' feelings, draws attention, and gives an impression about the mark when observed) is a distinguishable word sign or figurative sign though the remaining component(s) is/are indistinguishable or unlikely to be distinguishable;

c/ In case the combined sign consists of word signs and figurative signs that are indistinguishable or unlikely to be distinguishable but their unique way of combination creates a distinct impression, the combined whole may still be regarded as distinguishable;



d/ The combined sign consists of word signs and figurative signs that are indistinguishable or unlikely to be distinguishable but the combined whole has become distinguishable through the process of use under Clause 5 of this Article.

7. Minimum information sources must comply with the following provisions:

a/ To evaluate the likelihood of confusion of a sign stated in a mark registration application, the Intellectual Property Office of Vietnam shall search information at least in the following minimum information sources:

(i) Mark registration applications filed at the Intellectual Property Office of Vietnam with a filing date or priority date earlier than the filing date or priority date of the application being examined and international mark registration applications designating Vietnam that have been notified by International Bureau to the Intellectual Property Office of Vietnam and have a filing date or priority date earlier than the filing date or priority date of the application being examined, for identical or similar goods or services;

(ii) Protected or recognized marks that remain valid in Vietnam (including also well-known marks) and used for identical, similar or related goods and services;

(iii) Protected marks that are invalidated within no more than 3 years, except marks invalidated on the basis of non-use specified at Point d, Clause 1, Article 95 of the Law on Intellectual Property, and used for identical or similar goods and services;

(iv) Geographical indications protected in Vietnam;

(v) Place names, symbols or other signs indicating the geographical origin of the goods and services; geographical names, quality marks, inspection marks, and warranty marks of international organizations; national flags, national emblems, and national anthems of the Socialist Republic of Vietnam and other countries, the Internationale song; flags, names and symbols of state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations and socio-professional organizations of Vietnam and other countries in the world; names and images of great leaders and national heroes, names and images of Vietnamese and foreign public figures, etc., that are collected and stored by the Intellectual Property Office of Vietnam.

b/ When necessary, the Intellectual Property Office of Vietnam may search reference information sources other than the minimum information sources specified at Point a of this Clause, such as industrial design registration applications, trade names, list of protected plant varieties in Vietnam, etc.;

8. Evaluation of the confusing similarity of signs requested for registration with other marks:

a/ To evaluate whether a sign requested for registration stated in an application is identical or confusingly similar to another mark (below referred to as reference mark), it is necessary to compare their pronunciation, meaning (for word signs), structure and form of expression (for both word signs and figurative signs) under Points b and c of this Clause,

and at the same time, to compare goods and services bearing the sign with those bearing the reference mark under Clause 9 of this Article.

b/ A sign will be considered identical to a reference mark if it is identical to the latter in terms of structure and form of expression.

c/ A sign will be considered confusingly similar to a reference mark if:

(i) It is almost similar to the reference mark in terms of structure or/and pronunciation or/and meaning or/and form of expression to an extent that it misleads consumers into believing that these two objects are the same or one object is a variant of the other or these two objects have the same origin;

(ii) It is just the transcription or translation of the reference mark if the latter is a well-known mark.

9. Evaluation of the similarity of goods and services:

a/ Two goods or two services will be considered identical (of the same type) when they have the following characteristics:

(i) Having the same nature (composition, structure, etc.) and the same function and use purpose; or,

(ii) Having almost the same nature and having the same functions and use purposes;

b/ Two goods or two services will be considered similar if they fall into one of the following cases:

(i) They are similar in terms of nature and marketed through the same trade channel (distributed by the same method, sold over the same counter or adjacent counters, in the same type of store, and to the same relevant public/relevant consumers etc.);

(ii) They are similar in terms of function and use purposes and marketed through the same trade channel (distributed by the same method, sold over the same counter or adjacent counters, in the same type of store, and to the same relevant public/relevant consumers, etc.).

c/ A goods and a service will be considered similar if they fall into one of the following cases:

(i) They are related to each other in terms of nature (the goods or service or raw materials or parts of the goods or service is/are composed of the other); or,

(ii) They are related to each other in terms of function (to complete the function of the goods or service, it is necessary to use the other or they are often used together); or,

(iii) They are closely related to each other in terms of realization method (one is the result of the use or utilization of the other, etc.).

10. A sign will be considered identical or confusingly similar to a reference mark used for an identical or similar goods in the following cases:

a/ The sign is identical to the reference mark and the goods or service bearing the sign is identical or similar to the goods or service bearing the reference mark;

b/ The sign is confusingly similar to the reference mark and the goods or service bearing the sign is identical or similar to the goods or service bearing the reference mark and is likely to confuse consumers;

c/ The sign is identical or similar to the reference mark that is a well-known mark and although the goods or service bearing the sign is neither identical nor similar to the goods or service bearing that mark, the use of the sign as a mark may mislead consumers into believing that there exists a relation between the goods or service bearing that sign and the owner of the well-known mark and is likely to reduce the distinguishability of the well-known mark or damage the reputation of the well-known mark.

11. The examination of the likelihood of confusion of a sign shall be carried out under Article 73 and Clause 2, Article 74 of the Law on Intellectual Property and the following specific provisions:

a/ A sign will be considered to cause confusion about the origin of a goods or service in the following cases:

(i) It is identical or confusingly similar to the name or symbol of a country or territory (national flag, national emblem, national name, country name, locality name, etc.), misleading as to the fact that the goods or service bearing the sign originates in that country or territory though it actually originates in another country or territory;

(ii) The sign is identical or similar to a protected geographical indication and, if used, may mislead consumers as to the geographical origin of the goods; the sign is identical to, or contains, or is translated or transliterated from, a protected geographical indication for wines or spirits and, in case the sign is requested for registration as a mark for wines or spirits that do not originate in the geographical area bearing such geographical indication;

(iii) The sign is word(s) identical or similar to another person's trade name that has been legally used for the same type of goods or service and is likely to mislead consumers into believing that the goods or service bearing the sign is produced or provided by the person having such trade name;

(iv) The sign is identical or similar to the real name, nickname, pen name or image of a Vietnamese or foreign great leader, national hero or public figure; the sign is identical or similar to the name or image of a character or particular image of a widely known work and, if used, is likely to mislead consumers into believing that the goods or service bearing the sign is produced or provided by the work owner;

(v) The sign is identical to, or not significantly different from, another person's industrial design that has been and is being protected under an industrial design registration application with a filing date or priority date earlier than the filing date or priority date of the mark registration application.

b/ A sign will be considered to be likely to cause confusion or misunderstanding about the nature and value of a goods or service in the following cases:

(i) The sign is a word, drawing, image or symbol, etc., that gives a misleading impression about a feature or usage of the goods or service, such as a sign that is identical or similar to a mark or to another sign that is widely used to an extent that it is considered to be associated with a function or usage of a certain type of goods or service, misleading consumers into believing that the goods or service bearing the sign also has such feature or usage;

(ii) The sign is a word or an image that gives a misleading impression of the composition and structure of the goods or service, such as descriptions of another goods or service related to the goods or service bearing the sign, thus giving a misleading impression that the goods or service bearing the sign is made up of, or has the same nature as, the described goods or service.

12. For mark registration applications that have been concluded to meet protection conditions, the Intellectual Property Office of Vietnam shall, before issuing a notice of results of substantive examination of the application stating its intent to issue a mark registration certificate under Points c and d; and Item (ii), Point e, Clause 13 of this Article, carry out an inspection to ensure adherence to the first-to-file principle specified in Clauses 2 and 3, Article 90 of the Law on Intellectual Property under the following provisions:

a/ To check the first-to-file principle, it is necessary to search all mark registration applications that have been received by the Intellectual Property Office of Vietnam (up to the checking time) with a filing date or priority date (for applications entitled to priority) earlier than the filing date or priority date (if the application is entitled to priority) of the application being examined;

b/ The search is to find cases where there are multiple applications (including also the application being examined) filed by different persons to register identical or confusingly similar marks for identical or similar goods or services or there are multiple applications filed by the same person to register identical marks for identical goods or services; and to identify the application with the earliest filing date or priority date;

c/ If there are multiple applications falling into the case mentioned at Point b of this Clause, a mark registration certificate shall be granted only for the mark being the subject matter in the valid application with the earliest filing date or priority date among the applications that meet the conditions for grant of a protection title;

d/ Among the applications falling into the case specified at Point b of this Clause, if there are multiple applications with the same earliest filing date or priority date, the Intellectual Property Office of Vietnam shall only grant a mark registration certificate for the mark being the subject matter in only one application among these applications as agreed by all the applicants; if the applicants fail to reach an agreement, the Intellectual Property Office of Vietnam shall refuse to grant protection titles to all corresponding subject matters in these applications.

13. Before the time limit for substantive examination of an application specified in Clause 4, Article 12 of this Circular expires:

a/ If the subject matter requested for protection stated in the application does not meet the protection conditions or falls into one of the cases specified in Article 117 of the Law on Intellectual Property or if the subject matter meets these conditions but the application contains errors, the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, clearly stating its intent to refuse to grant a mark registration certificate and the reason for refusal or errors of the application, and set a time limit of 3 months from the date of notice issuance for the applicant to make an objection.

b/ Within the time limit specified at Point a of this Clause, if the applicant fails to correct errors or unsatisfactorily corrects errors or makes no objections or has made a groundless objection, the Intellectual Property Office of Vietnam shall issue a decision to refuse to grant a mark registration certificate within 15 days after the expiration of the time limit stated at Point a of this Clause.

c/ If the subject matter requested for protection stated in the application meets the protection conditions or the applicant has satisfactorily corrected errors or made a grounded explanation about all or some of substantive examination results, within the time limit specified at Point a of this Clause, the Intellectual Property Office of Vietnam shall issue a notice of application substantive examination results, stating its intent to issue a mark registration certificate for the whole or part of the subject matter that meets the protection conditions, and set a time limit of 3 months from the date of notice issuance for the applicant to pay the fee for grant of a mark registration certificate, the charge for publication and the charge for recording the decision on grant of a mark registration certificate in the register.

d/ If the subject matter requested for protection stated in the application has a part (calculated by product/service group) not meeting the protection conditions (or is not protected separately), the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, clearly stating the intent to issue a mark registration certificate for the part of the subject matter that meets the protection conditions, the fee for grant of a mark registration certificate and other charges and fees payable by the applicant if agreeing with application substantive examination results, and the reason for refusal to grant a mark registration certificate for the remaining part (or the part that is not protected separately), and at the same time, set a time limit of 3 months from the date of notice issuance for the applicant to give its/his/her opinions in writing (agreeing with or giving explanation about substantive examination results);

dd/ Within 15 days from the expiration of the time limit specified at Point d of this Clause, if the applicant neither gives its/his/her opinions nor sends a written agreement and pays charges and fees, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a mark registration certificate.

e/ Upon the expiration of the time limit specified at Point d of this Clause, if the applicant gives written opinions:

(i) In case the applicant makes grounded explanation about all substantive examination results, the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, stating the intent to grant a mark registration certificate and set a time limit of 3 months from the date of notice issuance for the applicant to pay the fee for grant of a mark registration certificate, the charge for publication and the charge for recording the decision on grant of a mark registration certificate in the register;

(ii) In case the applicant gives groundless explanations or gives grounded explanations about part of substantive examination results, the Intellectual Property Office of Vietnam shall issue a notice of substantive appraisal results, stating the intent to grant a mark registration certificate for the part of the subject matter that meets the protection conditions, the reason for refusal to grant a mark registration certificate for the remaining part (or the part that is not protected separately), and set a time limit of 3 months from the date of notice issuance for the applicant to pay the fee for grant of the mark registration certificate, the charge for publication and the charge for recording the decision on grant of a mark registration certificate in the register;

g/ In case the applicant fails to fully pay the fee for grant of a mark registration certificate, the charge for publication and the charge for recording the decision on grant of a mark registration certificate in the register within the time limit specified at Point c or e of this Clause, within 15 days from the expiration of the relevant time limit, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a mark registration certificate.

h/ For the cases specified at Points c, d and e of this Clause, if the applicant fully pays all charges and fees on time, within 15 days from the expiration of the relevant time limit, the Intellectual Property Office of Vietnam shall issue a decision on grant of a mark registration certificate. The decision on grant of a mark registration certificate under Item (ii), Point e of this Clause must clearly state the reason for refusal to grant a mark registration certificate for the corresponding part of the subject matter.

#### **Article 27. Recognition of well-known marks**

1. Well-known marks are protected under Vietnam's law under Article 75 of the Law on Intellectual Property and Article 6<sup>bis</sup> of the Paris Convention.

2. Rights to well-known marks are protected and belong to mark owners without registration procedures. Mark owners may use documents specified in Clause 3 of this Article to evidence their mark ownership and prove that their marks meet the conditions to be recognized as well-known marks.

3. Documents evidencing mark ownership and reputation of a mark may include information on the scope, scale, level and continuity of mark use, including explanation about the origin, history and duration of continuous use of the mark; number of countries

where the mark has been registered or recognized as a well-known mark; list of goods and services bearing the mark; territory where the mark is circulated; turnover from products sold or services provided; quantity of goods and services bearing the mark manufactured or sold; property value of the mark, mark transfer or licensing price and value of investment capital contributed in the form of the mark; investment in and expenses for advertising and marketing of the mark, including those for participation in national and international exhibitions; infringements, disputes and decisions or rulings of the court or competent agencies; surveyed number of consumers knowing the mark through purchase, sale, use, advertising and marketing; rating and evaluation of reputation of the mark by national or international organizations or the mass media; prizes and medals awarded on the mark; and results of examination carried out by intellectual property examination organizations.

4. In case a well-known mark is recognized, leading to the issuance of a decision on handling of infringement of rights to that well-known mark under Point d, Clause 1, Article 129 of the Law on Intellectual Property or a decision not to protect other marks under Point i, Clause 2, Article 74 of the Law on Intellectual Property, such well-known mark shall be included in the List of well-known marks kept at the Intellectual Property Office of Vietnam for use as reference information serving the establishment and protection of intellectual property rights.

## Section 6

### GEOGRAPHICAL INDICATION REGISTRATION APPLICATIONS AND PROCESSING THEREOF

#### **Article 28.** Requirements for geographical indication registration applications

Geographical indication registration applications must meet the requirements specified in Articles 100, 101 and 106 of the Law on Intellectual Property and Appendix I to Decree No. 65/2023/ND-CP.

#### **Article 29.** Formal examination and publication of geographical indication registration applications

Formal examination and publication of geographical indication registration applications shall be carried out according to the general procedures specified in Articles 9 and 10 of this Circular.

#### **Article 30.** Substantive examination of geographical indication registration applications

1. Substantive examination of geographical indication registration applications shall be carried out according to the general procedures specified in Article 12 of this Circular and specific provisions of this Article.

2. Evaluation of compatibility between the subject matter stated in a geographical indication registration application and the geographical indication registration certificate:

The subject matter stated in the geographical indication registration application is considered incompatible with the type of geographical indication protection title if it is not a visible sign used to indicate the geographical origin of the product from a specific region, locality, territory or country specified in Clause 22, Article 4 of the Law on Intellectual Property.

3. Minimum information sources in the substantive examination of a geographical indication registration application include:

a/ Marks currently protected in Vietnam for products identical or similar to products bearing the geographical indication with a protection commencement date earlier than the filing date of the geographical indication registration application, including also marks protected under treaties to which Vietnam is a contracting party;

b/ Marks stated in mark registration applications with earlier filing date or priority date in Vietnam for products identical or similar to products bearing the geographical indications;

c/ Marks recognized by the Intellectual Property Office of Vietnam as well-known marks.

d/ Geographical indications currently protected in Vietnam for products identical to products bearing the geographical indications.

4. Evaluation of a geographical indication based on protection conditions:

a/ The subject matter stated in the application is subject to the conditions specified in Article 79 of the Law on Intellectual Property and does not fall into the cases specified in Article 80 of the Law on Intellectual Property, specifically, it is required to prove the full satisfaction of the following conditions:

(i) There exists a geographical area corresponding to the geographical indication stated in the application;

(ii) The product originates in the above-mentioned geographical area;

(iii) The product has specific characteristics/quality and/or reputation determined by the geographical conditions of the above-mentioned geographical area under Article 82 of the Law on Intellectual Property;

b/ A geographical indication misleads consumers as to the true geographical origin of the product bearing that geographical indication under Clause 4, Article 80 of the Law on Intellectual Property Law when considered identical or confusingly similar to a sign known to Vietnamese consumers as an indication to the geographical origin of a goods or service.

Signs that are considered indications to geographical origins of goods and services must comply with the provisions similar to those of Clause 8, Article 27 of this Circular.



c/ The evaluation of geographical indications based on protection conditions specified at Points a and b of this Clause shall be carried out on the basis of information provided by applicants and information found in the minimum information sources specified in Clause 3 of this Article.

5. If finding a mark identical or similar to a geographical indication, the Intellectual Property Office of Vietnam shall notify thereof to the mark owner for the latter to give its/his/her opinions under Article 112 or 112a of the Law on Intellectual Property Law.

6. In case a geographical indication stated a registration application is considered consonant with a geographical indication currently protected under Clause 22a, Article 4 of the Law on Intellectual Property, the Intellectual Property Office of Vietnam shall notify the applicant thereof and require the latter to submit documents explaining the conditions for using and the way of presenting such geographical indication in order to ensure the distinguishability between those geographical indications. Explanatory documents must meet the conditions specified in Appendix I to Decree No. 65/2023/ND-CP.

7. Before the expiration of the time limit for substantive examination of an application specified in Clause 4, Article 12 of this Circular, the Intellectual Property Office of Vietnam shall send the applicant one of the following notices:

a/ If the subject matter requested for protection stated in the application fails to meet the protection conditions or falls into one of the cases specified in Article 117 of the Law on Intellectual Property or meets the protection conditions but the application contains errors, the Intellectual Property Office of Vietnam shall issue a notice of substantive examination results, clearly stating the intent to refuse to grant a geographical indication registration certificate, reason for refusal or errors of the application, and set a time limit of 3 months from the date of notice issuance for the applicant to give its/his/her opinions;

b/ If the subject matter requested for protection stated in the application meets the protection conditions or the applicant has satisfactorily corrected errors or has given grounded explanations about substantive examination results within the time limit specified at Point a of this Clause, the Intellectual Property Office of Vietnam shall issue a notice of application substantive examination results, stating the intent to issue a geographical indication registration certificate, and set a time limit of 3 months from the date of notice issuance for the applicant to pay the fee for grant of a geographical indication registration certificate, the charge for publication and the charge for recording the decision on grant of a geographical indication registration certificate in the register.

c/ Upon the expiration of the time limit specified in Point a of this Clause, if the applicant fails to correct errors or has unsatisfactorily corrected errors or makes no objection or has made a groundless objection, or upon the expiration of the time limit specified in Point b of this Clause, if the applicant fails to pay all the fee and charges, within 15 working days from the expiration of such time limit, the Intellectual Property Office of Vietnam shall issue a decision on refusal to grant a geographical indication registration certificate.

d/ For the cases mentioned at Point b of this Clause, if the applicant fully pays all the fee and charges on time, within 15 days from the expiration of the relevant time limit, the Intellectual Property Office of Vietnam shall issue a decision on grant of a geographical indication registration certificate.

### Chapter III

#### PROTECTION TITLES

##### **Article 31.** Refusal to grant or grant of protection titles

1. The Intellectual Property Office of Vietnam shall carry out procedures for refusing to grant protection titles under Clause 3, Article 117 of the Law on Intellectual Property for the cases specified in Clauses 1, 1a and 2, Article 117 of the Law on Intellectual Property.

2. The Intellectual Property Office of Vietnam shall carry out procedures for granting protection titles under Clause 1, Article 118 of the Law on Intellectual Property and Appendix II of Decree No. 65/2023/ND-CP.

##### **Article 32.** The National Registers of Industrial Property and the National Register of Industrial Property Representation

1. The National Registers of Industrial Property shall be made in accordance with the following provisions:

a/ The National Registers of Industrial Property are the State's official and public databases, fully showing information on the legal status of established industrial property rights. The National Registers of Industrial Property include:

- (i) The National Register of Inventions;
- (ii) The National Register of Utility Solutions;
- (iii) The National Register of Industrial Designs;
- (iv) The National Register of Semi-Conductor Integrated Circuit Layout Designs;
- (v) The National Register of Marks; and,
- (vi) The National Register of Geographical Indications.

b/ For industrial property subject matters registered according to national procedures, the National Registers mentioned at Point a of this Clause must consist of items corresponding to different protection titles. Each item must comprise:

(i) Information on the protection title: serial number and date of grant of the protection title; name of subject matter eligible for protection, scope/volume of protection, validity duration; name and address of the protection title holder/person registering the geographical indication, the organization managing the geographical indication, name and citizenship of the invention, layout design or industrial design author;

(ii) Information on the protection title application (its serial number, filing date and priority date, and name of the industrial property representation service organization (if any));

(iii) All modifications related to information on the modification of a protection title, status of validity (maintenance of validity, extension of validity, termination of validity, invalidation) of the protection title; the transfer of ownership or licensing of the industrial property subject matter; number of re-grant times, date of re-grant, grant of number of duplicates (to co-owners), date of grant of duplicates, change of industrial property representation service organization (if any), etc.

c/ For marks and industrial designs accepted for protection under international registration procedures, the Part on Internationally Registered Marks and the Part on Internationally Registered Industrial Designs in the corresponding National Registers specified at Items (iii) and (v), Point a of this Clause must comprise:

(i) Information on the protection status: serial number and date of issuance of the decision or date of acceptance of protection; name of the subject matter eligible for protection, scope of protection, validity duration; name and address of the protection title owner, name and citizenship of the industrial design author;

(ii) Information on the protection title application (its serial number, filing date and priority date, and name of industrial property representation service organization (if any));

d/ For geographical indications accepted for protection under treaties, the Part on International Geographical Indications in the National Register specified at Item (vi), Point a of this Clause must include:

(i) Information on the protection status: title and effective date of the treaty or date of acceptance of geographical indication protection under the treaty; geographical indication eligible for protection, scope/volume of protection; name and address of the organization managing the geographical indication;

(ii) Information on the dossier and documents related to the geographical indication requested for protection (treaty or international agreement on protection, database related to the geographical indication requested for protection (if any));

(iii) All modifications of the legal status of the geographical indication eligible for protection: validity status, scope/volume of protection, transfer of management rights, etc.

2. The National Register of Industrial Property Representation consists of items corresponding to each industrial property representation service organization, specifically as follows:

(i) Information on the industrial property representation service organization (full name, transaction name and address; recording or deletion of name of, and modified information on, the industrial property representation service organization);

(ii) Information on the organization's list of industrial property representatives (full name, permanent resident address, number of industrial property representation service practice certificate of each member on the list);

(iii) Information on change of the list of industrial property representatives (grant, re-grant or revocation of industrial property representation service practice certificates, deletion of names, etc.).

3. The National Registers specified in Clauses 1 and 2 of this Article shall be made and kept by the Intellectual Property Office of Vietnam in paper or electronic form. Anyone may look up electronic National Registers (if available) or request the Intellectual Property Office of Vietnam to provide copies or excerpts of the National Registers provided that he/she/it pays copying service charge.

**Article 33. Publication of decisions on grant of protection titles**

1. All decisions on grant of protection titles, decisions on acceptance for protection of internationally registered industrial designs, and decisions on acceptance for protection of internationally registered marks shall be published by the Intellectual Property Office of Vietnam on the Industrial Property Official Gazette within 60 days after such decisions are issued and applicants shall pay the publication charge.

2. Information published under Clause 1 of this Article includes information stated in the relevant decision (including the decision serial number and issuance date) and the following information:

a/ For an invention patent or a utility solution patent: name and citizenship of the invention author; invention summary; drawings enclosed with the invention summary (if any); international invention classification; information related to application conversion or splitting, initial number of the split/converted application, etc. (if any), and other information (if any);

b/ For an industrial design patent: name and citizenship of the industrial design author; a set of photos or drawings of the industrial design; number of schemes requested for protection; international industrial design classification; information related to application splitting, initial number of the split application, etc. (if any); and other information (if any);

c/ For a decision on acceptance for protection of an internationally registered industrial design: name and citizenship of the industrial design author; a set of photos or drawings of the industrial design; number of schemes requested for protection; international industrial design classification; information related to application splitting, initial number of the split application, etc. (if any); and other information (if any);

d/ For a mark registration certificate: mark specimen and list of goods and services bearing the mark according to international goods and service classification; information related to application conversion or splitting, initial number of the split application, etc. (if

any); regulation on use of the collective mark or regulation on use of the certification mark (for collective marks and certification marks); and other information (if any);

dd/ For a decision on acceptance for protection of an internationally registered mark: mark specimen; list of goods and services bearing the mark according to international goods and service classification; and other information (if any);

e/ For a geographical indication registration certificate: summary of particular characteristics and name of the product bearing the geographical indication; and other information (if any);

g/ For a semi-conductor integrated circuit layout design registration certificate: name and citizenship of the layout design author; and other information (if any), excluding confidential information.

3. Geographical indications accepted for protection under treaties shall be published by the Intellectual Property Office of Vietnam on the Industrial Property Official Gazette within 60 days from the date of acceptance for protection. Necessary information related to aforesaid geographical indications, including names of geographical indications, summaries of particular characteristics and names of products bearing geographical indications; scopes/areas of protection of geographical indications; and other information (if any), shall be published under Clause 2, Article 11 of Decree No. 65/2023/ND-CP.

#### **Article 34.** Grounds for invalidation of protection titles

1. An invention protection title shall be invalidated for the reason that the invention for which the protection title is granted falls beyond the scope of disclosure in the original description of the invention registration application under Point dd, Clause 2, Article 96 of the Law on Intellectual Property in case for persons with average knowledge in the relevant art, there are changes in the invention description contents and such changes give rise to information not directly and unclearly derived from the original description of the registration application, specifically as follows:

a/ In the course of application modification or supplementation, the applicant includes in the invention description the technical feature(s) that cannot be directly and clearly determined in the original description;

b/ Information (including information on the purpose and efficiency, etc.) that cannot be directly and clearly determined in the original description (including also drawings) and/or the initial protection request is added to clearly disclose the invention or fully disclose the protection request;

c/ Contents to be added to the description are technical features related to dimensional parameters obtained by measuring dimensional parameters on drawings;

d/ Details or additional contents that are not mentioned in the original description of the application are added to the description, leading to a special efficiency and/or effect in the original application;

dd/ Efficiency and/or effects (benefits) are added to the description that cannot be determined in the original application by a person with average knowledge of the relevant art;

e/ Technical features in the protection request are changed and they cannot be directly and clearly disclosed or determined from the original description;

g/ New contents are introduced by changing undetermined contents into definite and specific contents;

h/ Separate technical features of the original application are combined into a new technical feature while the relationship among these technical features is not disclosed in the original application;

i/ One or more than one technical feature is/are changed in the description in order to make technical features different from those stated in the original description;

k/ A technical feature is removed from the point requested for protection but such technical feature is necessary for the subject matter requested for protection to achieve the set purpose and/or removal of such technical feature changes another/other technical feature(s).

2. A mark protection title shall be invalidated due to a bad intention of the mark registration applicant specified at Point a, Clause 1, Article 96 of the Law on Intellectual Property in the following cases:

a/ There are grounds to believe that, by the filing date, the applicant knows or has grounds to know that the to-be-registered mark is identical or confusingly similar to a mark currently and widely used in Vietnam or a well-known mark used in other countries for an identical or similar goods or service; and,

b/ The registration is intended to take advantage of the reputation and prestige of such mark to seek profit; or mainly to resell, license or transfer the registration right to holders of marks specified at Point a of this Clause; or to prevent holders of marks specified at Point a of this Clause from accessing the market so as to restrict competition; or other acts contrary to fair trade practices.

3. The provisions of Clauses 1 and 2 of this Article also apply in the course of processing invention and mark registration applications.

#### Chapter IV

#### COMPLAINTS ABOUT INDUSTRIAL PROPERTY-RELATED PROCEDURES AND SETTLEMENT THEREOF

**Article 35.** Complainants, complained subjects, statute of limitations for filing complaints and complaint settlers

1. Complainants include organizations and individuals specified in Article 119a of the Law on Intellectual Property.

2. Decisions or notices likely to be subject to complaint under Clause 1, Article 119a of the Law on Intellectual Property include official decisions and notices of the Intellectual Property Office of Vietnam concerning industrial property-related procedures specified in relevant provisions of this Circular; they include:

a/ Notices of refusal to receive applications;

b/ Decisions on acceptance of valid applications;

c/ Decisions on refusal to accept applications;

d/ Notices of acceptance or rejection of requests for application modification or supplementation/application conversion/applicant change/application withdrawal;

dd/ Decisions on refusal to grant protection titles; decisions on grant of protection titles;

e/ Decisions on refusal to accept for protection internationally registered industrial designs; decisions on refusal to accept for protection internationally registered marks; decisions on acceptance for protection internationally registered industrial designs; and decisions on acceptance for protection of internationally registered marks;

g/ Decisions on grant of protection title duplicates, decisions on re-grant of protection titles; decisions on refusal to grant protection title duplicates; and decisions on refusal to re-grant protection titles;

h/ Notices of maintenance of validity of protection titles, and decisions on refusal to maintain validity of protection titles;

i/ Decisions on extension of validity of protection titles, and decisions on refusal to extend validity of protection titles;

k/ Decisions on modification of protection titles, and decision on refusal of requests for protection title modification;

l/ Decisions on termination of validity or invalidation of part or the whole of protection titles, and notices of refusal to terminate/invalidate protection titles;

m/ Decisions on or notices of processing of requests for termination of validity or invalidation of internationally registered marks; decisions on or notices of processing of requests for termination of validity or invalidation of internationally registered industrial designs;

n/ Administrative decisions related to industrial property representatives, industrial property assessment and transfer of industrial property rights;

o/ Initial complaint settlement decisions of the Intellectual Property Office of Vietnam;

p/ Decisions, notices and other acts subject to complaint as specified in the law on complaints.

Notices providing information or requesting dossier completion are not administrative decisions and therefore not subject to complaint, for example, notices of examination results, notices of errors, requests for modification or addition of documents, intention to refuse, notices of temporary refusal to protect internationally registered marks, and notices of refusal to protect internationally registered industrial designs.

3. The following contents are not accepted in the course of settlement of a complaint:

a/ Request for modification or supplementation of the registration application for establishment of industrial property rights subject to the complained decision or notice (such as request for modification of the invention description (including the protection request); request for modification of the set of photos or drawings and description of the industrial design; request for modification of the mark specimen and list of goods and services bearing the mark; request for modification of the name of the product bearing the geographical indication and description of particular characteristics of the product bearing the geographical indication and map of the geographical area, for geographical indication registration applications), unless otherwise provided by treaties to which Vietnam is a contracting party;

b/ Circumstances that exist in the course of examination of an industrial property registration application but due to some objective reason, the Intellectual Property Office of Vietnam and related organizations and individuals only know such circumstances after the decision on grant of/refusal to grant a protection title (below referred to as new circumstances) is issued, unless such circumstances are put forth by a third party under Point b, Clause 6, Article 38 of this Circular.

4. Complaints shall be submitted within the statute of limitations specified in Articles 9 and 33 of the Law on Complaints.

5. The person competent to settle first-time complaints is the Director of the Intellectual Property Office of Vietnam; the person competent to settle second-time complaints is the Minister of Science and Technology (below collectively referred to as “complaint settler”).

### **Article 36. Complaints**

1. A complaint shall be made under Clause 1, Article 3 of Decree No. 124/2020/ND-CP of October 19, 2020, detailing a number of articles of, and measures to implement, the Law on Complaints (below referred to as Decree No. 124/2020/ND-CP), and must contain all information specified in Article 119a of the Law on Intellectual Property and documents relevant to complaint contents specified in Clause 2, Article 8 of the Law on Complaints, specifically as follows:

a/ A copy of the complained decision or notice of the Intellectual Property Office of Vietnam and a copy of the industrial property registration application subject to such



decision or notice (in case the applicant files a second-time complaint); or documents indicating information on such decision/notice/application;

b/ A copy of the first-time complaint settlement decision (for second-time complaints);

c/ Evidence (proof or exhibits) used to prove and clarify the complaint argument.

Evidence may be additionally submitted within 1 month from the date of complaint filing.

2. A complaint filed through a Vietnam-based lawful representative under Clause 2, Article 119a of the Law on Intellectual Property must be accompanied by the power of attorney; a copy of the power of attorney in the cases specified in Clause 5, Article 3 of this Circular bearing certification by the Intellectual Property Office of Vietnam, for second-time complaints.

#### **Article 37.** Withdrawal of complaints and termination of complaint settlement

1. Applicants may withdraw their complaints under Article 10 of the Law on Complaints. If a complaint is withdrawn under the authorization of the applicant, the authorization must be clearly stated in the power of attorney. Withdrawn complaints are regarded as having never been filed. Complaints and charges for the provision of complaint settlement services will not be refunded to complainants, except complaints withdrawn before the date of issuance of notices of acceptance of or refusal to accept applications.

2. The complaint settler shall issue a decision on termination of the settlement of a complaint in the following cases:

a/ The complainant withdraws his/her/its complaint;

b/ The protection title or international registration of the mark or industrial design in Vietnam is invalidated or the internationally registered mark is no longer valid under a relevant treaty.

#### **Article 38.** Procedures for settling complaints

1. The acceptance of complaints for settlement must comply with Article 27 of the Law on Complaints and Clause 1, Article 119a of the Law on Intellectual Property, specifically as follows:

a/ Within 10 days after receiving a complaint, a complaint settler shall:

(i) Issue a notice of refusal to accept the complaint if such complaint falls into one of the cases specified at Point b of this Clause, clearly stating the reason for refusal; or,

(ii) Issue a notice of acceptance of the complaint for settlement if it does not fall into the cases specified at Point b of this Clause, clearly stating the date of complaint acceptance and determine the search charge and/or examination charge in case re-examination is required to serve the complaint settlement corresponding to complaint contents (if any) and set a time limit of 1 month for the complainant to pay such charges.

b/ A complaint may not be accepted for settlement if falling into one of the following cases:

(i) The complained subject is not an official decision or notice specified in Clause 2, Article 35 of this Circular;

(ii) The complained decision, notice or act is not directly related to the complainant's lawful rights and interests;

(iii) It is not filed under Clause 2, Article 36 of this Circular;

(iv) It is filed beyond the law-specified statute of limitations, except the cases specified in Clauses 3 and 4, Article 15 of Decree No. 65/2023/ND-CP;

(v) It is filed after a second-time complaint settlement decision is issued;

(vi) It has been accepted by a court for settlement or has been settled under a court judgment or ruling other than a court ruling on termination of the settlement of an administrative case;

(vii) The complainant continues to file it despite the expiration of the time limit of 30 days after the issuance of the complaint settlement termination decision under Article 10, and Clause 8, Article 11, of the Law on Complaints;

(viii) It fails to indicate illegal elements of the complained decision, notice or act but only contains a request for modification or supplementation of the application subject to such decision or notice;

(ix) It is against a notice, administrative decision or act related to an industrial property subject matter classified as a state secret.

c/ If a complainant fails to pay the examination charge in case re-examination is required to serve the complaint settlement under the notice of acceptance of complaint for settlement specified at Item (ii), Point a of this Clause, the complaint shall be settled on the basis of documents included in the dossier.

2. The time limit for complaint settlement must comply with Article 119a of the Law on Intellectual Property and Articles 28 and 37 of the Law on Complaints.

3. To verify complaint contents, the complaint settler shall consult persons having rights and obligations directly related to the complaint accepted under Article 21 of Decree No. 124/2020/ND-CP (below referred to as "related parties") as follows:

a/ The complaint settler shall notify in writing such complaint contents to the related parties and set a time limit of 1 month from the date of notice issuance for the latter to give opinions (if any);

b/ The related parties may provide information and evidence to prove grounds of their arguments within the time limit specified at Point a of this Clause. The complaint settler shall consider such information and evidence in the course of complaint settlement.

c/ The complaint settler shall notify in writing the related parties' opinions and set a time limit of 2 months from the date of notice issuance for the complainant to give feedback;

d/ Upon the expiration of the set time limit, if one party fails to give opinions, the complaint shall be settled on the basis of documents enclosed with it, including those expressing the other party's opinions.

4. In the course of first-time complaint settlement in complicated complaint cases, the first-time complaint settler may proactively or at the request of the complainant carry out re-examination under Clause 4, Article 119a of the Law on Intellectual Property and guidance in Article 13 of this Circular. In the course of re-examination, the first-time complaint settler may consult independent consultants or the Advisory Council under the following provisions:

a/ The first-time complaint settler may consult independent consultants or the Advisory Council in the course of re-examination depending on the complexity of contents subject to re-examination.

The Advisory Council shall be composed of its chairperson and members. Independent consultants and the Advisory Council shall provide advices to the complaint settler on technical and legal issues of contents subject to re-examination and settlement plans.

Independent consultants, the chairperson and members of the Advisory Council must be those possessing appropriate professional qualifications and selected from the list of industrial property consultants or other sources (in case there are no appropriate consultants on such list).

The list of industrial property consultants shall be made and published on the Industrial Property Official Gazette by the Intellectual Property Office of Vietnam, in coordination with the Inspectorate of the Ministry of Science and Technology.

b/ The Advisory Council shall be organized and operate on the following principles:

(i) It is established under the decision of the first-time complaint settler;

(ii) It works in the form of meetings, collective discussions and majority voting;

(iii) The parties involved in the complaint and those with related rights and obligations may be invited to attend meetings of the Advisory Council to clarify circumstances of the case.

c/ The following persons may neither participate in the Advisory Council nor act as independent consultants in a complaint case:

(i) The complained person (the person issuing the complained decision or notice);

(ii) The person who has examined the application for establishment of industrial property rights related to the complained decision or notice;

(iii) Persons with rights and interests directly related to the complaint case;

(iv) Persons who are not likely to remain objective in the complaint case, if there are grounds to believe that.

The persons specified at this Point shall explain and provide information relevant to jobs they have performed within complaint contents.

d/ Opinions of independent consultants and of the Advisory Council chairperson and members and working results of the Advisory Council must be recorded in a written report.

5. First-time complaint settlers shall hold dialogues under Article 30 of the Law on Complaints. Independent consultants and members of the Advisory Council for re-examination in the course of settlement of first-time complaints (if any) may be invited to attend dialogues.

6. A person competent to settle a first-time complaint shall issue a complaint settlement decision under the following provisions:

a/ Based on results of the review of the complained decision or notice, the first-time complaint settler shall issue a complaint settlement decision, which must have the contents specified in Clause 2, Article 31 of the Law on Complaints.

b/ In case a complainant who is not the applicant or requester for establishment of industrial property rights or registration of a contract on transfer of industrial property rights subject to the complained decision or notice provides new circumstances that are likely to affect complaint settlement conclusions, the Intellectual Property Office of Vietnam shall re-examine new circumstances-related contents according to procedures for re-examining the registration application for establishment of industrial property rights specified at Points b and c, Clause 2, Article 13 of this Circular. Based on such examination results, the first-time complaint settler shall issue a complaint settlement decision under Point a of this Clause.

7. This Circular's provisions on first-time complaint settlement also apply to second-time complaint settlement, except relevant provisions on consulting consultants about the re-examination of application contents specified in Clause 4 of this Article. For complicated complaints, if deeming it necessary, the second-time complaint settler shall establish the Advisory Council under Clause 4 of this Article to consult the latter in the course of complaint settlement.

#### **Article 39.** Publication of complaint settlement decisions

A complaint settlement decision shall be published on the Portal of the complaint-settling agency within 15 days and on the Industrial Property Official Gazette within 2 months from the date of decision issuance.

#### **Article 40.** Effect of complained decisions and notices and complaint settlement decisions

1. A complained decision or notice remains valid throughout the course of complaint settlement unless the execution of such decision or notice is terminated under the complaint settler's written decision under Article 35 of the Law on Complaints or at the request of a court in accordance with the procedure law.

2. The Intellectual Property Office of Vietnam shall immediately execute legally effective complaint settlement decisions under Article 44 of the Law on Complaints, specifically as follows:

a/ The Director of the Intellectual Property Office of Vietnam's first-time complaint settlement decision takes effect 30 days from the date of its issuance, provided that the complainant does not file a second-time complaint. For deep-lying or remote areas with difficult travel conditions, such time limit may be prolonged but must not exceed 45 days;

b/ The Minister of Science and Technology's second-time complaint settlement decision takes effect 30 days from the date of its issuance. For deep-lying or remote areas with difficult travel conditions, such time limit may be prolonged but must not exceed 45 days.

3. The acceptance of a second-time complaint for settlement shall be notified to the first-time complaint settler within 10 days from the date of acceptance. In this case, the first-time complaint settlement decision is not legally effective. The complained decision or notice remains effective until the second-time complaint settlement decision takes effect.

4. A second-time complainant may immediately notify the first-time complaint settler of the filing of his/her/its second-time complaint to ensure his/her/its rights and interests.

#### **Article 41.** Measures to reduce complaints

1. The Intellectual Property Office of Vietnam shall check and review its issued decisions or notices. If finding any illegal signs, it shall promptly modify or remedy such decisions or notices to prevent them from complained, unless such decisions or notices are currently subject to complaints.

2. In the course of complaint settlement, complaint settlers shall encourage and create conditions for disputing parties to conciliate in accordance with law.

## Chapter V

### ASSURANCE OF INDUSTRIAL PROPERTY INFORMATION

#### **Article 42.** Building and management of the national database on industrial property

1. The Intellectual Property Office of Vietnam shall build and manage industrial property information databases, develop classification and search tools, and provide guidance on search and use of domestic and overseas industrial property information; provide information fully, promptly and accurately, ensuring accessibility to information databases for those wishing to use information for the establishment and protection of

industrial property rights, and research, development and business activities; and manage, and organize the sharing, connection, exploitation of information, carry out international cooperation and other activities related to the national database on industrial property.

2. The national database on industrial property contains bibliographic information and full-text information (if any) that are collected in a selective and systematic manner to serve information search related to:

a/ Published industrial property registration applications;

b/ Protection titles granted and industrial property rights recognized for protection in Vietnam.

**Article 43.** Access to and exploitation of information in the national database on industrial property

All organizations and individuals may access and exploit information in the national database on industrial property by either of the following modes:

1. Searching on their own information in databases publicly installed by the Intellectual Property Office of Vietnam at information search facilities for public access or on the Internet.

2. Using information search and material provision services provided by the Intellectual Property Office of Vietnam, provided that they pay service charges.

**Article 44.** Information search and document provision services

The Intellectual Property Office of Vietnam shall provide information search and material provision services to organizations and individuals wishing to use such services under Clause 2, Article 43 of this Circular.

**Article 45.** Assurance of industrial property information in localities

1. Depending on their conditions and capabilities, local state management agencies in charge of industrial property may establish and manage industrial property databases to ensure industrial property information for research, application, development of production and business activities and protection of industrial property rights in their localities.

2. State management agencies in charge of industrial property in provinces and centrally run cities shall and may carry out industrial property information assurance activities in accordance with this Circular.

3. The Intellectual Property Office of Vietnam shall make statistics on information in the national database on industrial property at least once every 6 months to serve the state management of industrial property in provinces and centrally run cities.

**Article 46.** Grant of copies of documents and certification of first-time applications to enjoy priority right

1. All related organizations or individuals may request the Intellectual Property Office of Vietnam to grant copies of documents distributed by the Office or duplicates from

master registers made by the Office, or copies of documents prepared by such organizations or individuals and submitted to the Office in the course of establishing industrial property rights. Requesters of such copies shall pay expenses for document copying.

2. Applicants may request the Intellectual Property Office of Vietnam to certify copies of their first-time applications (even applications refused to be accepted as valid applications or those withdrawn by applicants) to enjoy the priority right provided they pay expenses for document copying.

3. The Intellectual Property Office of Vietnam shall provide copy issuance and first-time application certification services to organizations and individuals under Clause 2 of this Article.

## Chapter VI

### IMPLEMENTATION PROVISIONS

#### **Article 47.** Transitional provisions

1. Objections to industrial property registration applications that are filed to the Intellectual Property Office of Vietnam on or after January 1, 2023, under Article 112a of the Law on Intellectual Property but have yet to be completely processed by the Intellectual Property Office of Vietnam shall be processed under Article 11 of this Circular.

2. Third parties' opinions specified in Article 112 of the Law on Intellectual Property that are submitted to the Intellectual Property Office of Vietnam before August 23, 2023, but have yet to be completely processed by the Intellectual Property Office of Vietnam shall be processed under the Ministry of Science and Technology's Circular No. 01/2007/TT-BKHCN of February 14, 2007, guiding the implementation of the Government's Decree No. 103/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual Property concerning industrial property, as amended and supplemented under Circular No. 13/2010/TT-BKHCN of July 30, 2010, Circular No. 18/2011/TT-BKHCN of July 22, 2011, Circular No. 05/2013/TT-BKHCN of February 20, 2013, and Circular No. 16/2016/TT-BKHCN of June 30, 2016.

3. This Circular's provisions apply to applications for establishment of industrial property rights that are submitted on or after August 23, 2023, except the cases specified in Clauses 4, 5 and 6 of this Article.

4. This Circular's provisions on the format of complaints apply to applications that are filed on or after the effective date of this Circular.

5. The provisions of Clause 8, Article 16; Clause 10, Article 23; and Clause 13, Article 26, of this Circular apply to industrial property registration applications that are filed before the effective date of the Circular but for which substantive examination results have yet to be notified.

6. The provisions of Article 34 of this Circular apply to invention and mark registration applications that are filed on or after January 1, 2023.

**Article 48. Effect**

1. This Circular takes effect on November 30, 2023.

2. From the effective date of this Circular, the following Circulars cease to be effective:

a/ The Minister of Science and Technology's Circular No. 01/2007/TT-BKHHCN of February 14, 2007, guiding the implementation of the Government's Decree No. 103/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual Property concerning industrial property;

b/ Circular No. 18/2011/TT-BKHHCN of July 22, 2011, amending and supplementing a number of provisions of Circular No. 01/2007/TT-BKHHCN of February 14, 2007, guiding the implementation of Decree No. 103/2006/ND-CP of September 22, 2006, as amended and supplemented under Circular No. 13/2010/TT-BKHHCN, and Circular No. 01/2008/TT-BKHHCN of February 25, 2008, guiding the grant and revocation of industrial property examiner cards and certificates of eligibility for provision of industrial property examination, as amended and supplemented under Circular No. 04/2009/TT-BKHHCN of March 27, 2009;

c/ Circular No. 05/2013/TT-BKHHCN of February 20, 2013, amending and supplementing a number of provisions of Circular No. 01/2007/TT-BKHHCN of February 14, 2007, guiding the implementation of Decree No. 103/2006/ND-CP, detailing a number of articles of the Law on Intellectual Property concerning industrial property, as amended and supplemented under Circular No. 13/2010/TT-BKHHCN of July 30, 2010, and Circular No. 18/2011/TT-BKHHCN of July 22, 2011;

d/ Circular No. 16/2016/TT-BKHHCN of June 30, 2016, amending and supplementing a number of articles of Circular No. 01/2007/TT-BKHHCN of February 14, 2007, guiding the implementation of the Government's Decree No. 103/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual Property concerning industrial property, as amended and supplemented under Circular No. 13/2010/TT-BKHHCN of July 30, 2010, Circular No. 18/2011/TT-BKHHCN of July 22, 2011, and Circular No. 05/2013/TT-BKHHCN of February 20, 2013.

3. Provisions concerning industrial property of Article 2 of Circular No. 13/2010/TT-BKHHCN of July 30, 2010, amending and supplementing a number of provisions of Circular No. 17/2009/TT-BKHHCN of June 18, 2009, guiding state quality inspection of imported goods under the management by the Ministry of Science and Technology, and Circular No. 01/2007/TT-BKHHCN of February 14, 2007, guiding the implementation of the Government's Decree No. 103/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Law on Intellectual Property concerning industrial property, cease to be effective on the effective date of this Circular.



4. Any problems arising in the course of implementation should be promptly reported to the Ministry of Science and Technology for guidance.-

*For the Minister of Science and Technology*  
Deputy Minister  
BUI THE DUY

*\* The Appendix to this Circular is not translated.*