
THE GOVERNMENT

No. 122/2010/ND-CP

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom – Happiness

Hanoi, December 31, 2010

DECREE

**AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE GOVERNMENT'S
DECREE NO. 103/ 2006/ND-CP OF SEPTEMBER 22, 2006, DETAILING AND GUIDING A
NUMBER OF ARTICLES OF LAW ON INTELLECTUAL PROPERTY REGARDING INDUSTRIAL
PROPERTY**

THE GOVERNMENT

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

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

At the proposal of the Science and Technology Minister;

DECREES:

Article 1. To amend and supplement a number of articles of the Government's Decree No. 103/2006/ND-CP of September 22, 2006, detailing and guiding a number of articles of Law on Intellectual Property regarding industrial property.

1. To amend Point h, Clause 2, Article 3 as follows:

"h. Rights to management of geographical indications shall belong to their localities, including geographical names and other signs indicating the geographical origin of local specialties";

2. To amend Clauses 3, 4 of, and supplement Clause 5 to Article 19 as follows:

"3. The Ministry of Agriculture and Rural Development and the Ministry of Industry and Trade shall assume the prime responsibility for and coordinate with People's Committees of provinces or central-level cities in identifying specialties, characteristics and production process of specialties bearing geographical indications managed by ministries, agencies or localities.

4. People's Committees of provinces or central-level cities shall file applications for registration and organize the management of geographical indications used for local specialties and grant permits for the registration of collective marks or certificate marks for geographical names and other signs indicating the geographical origins of local specialties.

5. The Ministry of Science and Technology shall specify criteria for identifying geographical names and other signs indicating the geographical origins of products."

3. To supplement the Chapter IIIa as follows:

"Chapter IIIa. CONFIDENTIAL INVENTIONS

Article 23a. Confidential inventions; protection titles of confidential invention; contents of and limitations on rights to confidential inventions

1. Inventions that are classified by competent state agencies as state secrets in the field of national defense and security under laws and regulations on protection of state secrets are referred to as confidential inventions.

2. Confidential inventions shall only be granted confidential invention patents or confidential utility solution patents.

3. Confidential invention applications, confidential invention patents and confidential utility solution patents may not be disclosed and must be kept confidential under laws and regulations on protection of state secrets.

4. The utilization and licensing of confidential inventions and the assignment of the right to file applications and the right to own confidential inventions must be permitted by competent state agencies under laws and regulations on protection of state secrets.

5. The Minister of Public Security and the Minister of National Defense may utilize or assign organizations or individuals to utilize confidential inventions for the national defense or security purposes under Articles 145.146 and 147 of Law on intellectual Property.

6. After a confidential invention is disclosed by a competent agency under laws and regulations on protection of state secrets, its application and protection title shall be handled as follows:

a. The confidential invention application shall be further processed like a normal invention application;

b. The confidential invention patent or confidential utility solution patent shall be converted into a normal invention patent or utility solution patent, and published in the Industrial Property Official Gazette, as well as recorded in the National Register of Inventions.

Article 23b. Security control of inventions before filing for protection overseas

1. Vietnamese organizations and individuals shall only register their confidential inventions in countries in which laws and regulations on protection of confidential inventions are available and shall seek permission from competent agencies in accordance with Clause 2, Article 23c of this Decree.

2. Inventions of Vietnamese organizations and individuals and inventions created in Vietnam shall not be protected by Viet Nam if the applications of those inventions thereof have been filed for industrial property protection overseas in contravention of the following provisions on security control:

a. Applications for industrial property protection shall only be filed overseas when patent applications have been filed in Vietnam and the time limit of 6 months from the filing date has expired, except cases specified at Point b of this Clause;

b. The filing of applications for industrial property protection overseas is not allowed if inventions are classified confidential under laws and regulations on protection of state secrets and is communicated by competent agencies about that.

Article 23c. Identification and disclosure of confidential inventions; establishment and transfer of rights to confidential inventions

1. The identification and disclosure of confidential inventions shall be conducted by the Ministry of National Defense and the Ministry of Public Security under laws and regulations on protection of state secrets.

2. The Ministry of Public Security shall assume the prime responsibility for and coordinate with the Ministry of National Defense and the Ministry of Science and Technology in specifying procedures for identification and disclosure of confidential inventions; protection of confidential inventions; procedures for examination of applications and grant of confidential invention protection titles; management of utilization, licensing of confidential inventions, and overseas registration of industrial property protection of confidential inventions in accordance with laws and regulations on protection of state secrets and laws and regulations on intellectual property."

4. To amend and supplement Article 29 as follows:

"Article 29. Grant and revocation of Certificates of industrial property representative practice

1. Certificates of Industrial property representative practice shall be granted to individuals who satisfy the conditions specified in Clause 2, Article 155 of Law on Intellectual Property after they pay prescribed fees and charges in accordance with applicable laws and regulations.

2. Certificates of industrial property representative practice is revoked when:

a. The certificate holder has quitted the job of industrial property representative;

b. The certificate holder no longer satisfies the conditions specified in Clause 2, Article 155 of Law on Intellectual Property;

c. The certificate holder is revoked of the right to use the certificate under a competent state agency's decision.

3. An application for re-grant of the Certificate for industrial properly representative practice after being revoked according to Point c, Clause 2 of this Article shall only be considered upon the expiration of the duration of revocation of the right to use this certificate.

4. The Ministry of Science and Technology is responsible for granting and revoking certificates of industrial property representative practice.

5. To supplement Article 29a as follows:

"Article 29a. Recording and deleting organizations providing industrial property representative services

1. Organizations satisfying the conditions as specified in Article 154 of Law on Intellectual Property which are detailed in Clauses 2, 3 and 4 of this Article shall be recorded as industrial property representative organizations in the national register of industrial property representatives and published in the Industrial Properly Official Gazette at their request and after paying prescribed fees and charges.

2. Organizations defined in Clause 1, Article 154 of Law on Intellectual Property include:

a. Enterprises established and operating under laws and regulations on enterprises;

b. Cooperatives and unions of cooperatives established and operating under laws and regulations on cooperatives;

c. Law-practicing organizations established and operating under laws and regulations on lawyers, excluding affiliates of foreign law-practicing organizations, wholly foreign-owned limited

liability law firms, and limited liability law firms in the form of joint ventures between Vietnamese law-practicing organizations and foreign law-practicing organizations;

d. Scientific and technological organizations established and operating under laws and regulations on science and technology.

3. Affiliates and other dependent units of organizations specified in Clause 2 of this Article shall only provide industrial property representative services in the name of their principals.

4. At-law representatives of industrial property representative organizations or persons who are authorized by these representatives to provide industrial property representative services must satisfy the conditions for provision of industrial property representative services as specified in Clause 1, Article 155 of Law on Intellectual Property.

5. An industrial property representative organization has its name deleted from the national register of industrial property representatives and such deletion shall be published in the Industrial Property Official Gazette when:

a. It terminates the provision of industrial property representative services:

b. It no longer fully satisfies the conditions specified in Article 154 of Law on Intellectual Property Law."

6. To supplement Clauses 2a, 2b and 3a to Article 36 as follows:

"2a. Industrial property applications filed with the National Office of Intellectual Property in the period from July 1, 2006 to December 31, 2009, shall be processed in accordance with the Law on Intellectual Property 2005 and guiding regulations.

2b. Industrial property applications filed with the National Office of Intellectual Property from January 1, 2010 onward shall be processed in accordance with Law 2009 amending and Supplementing a Number of Articles of the intellectual Property and guiding regulations.

3a. The National Office of Intellectual Property shall grant certificates of geographical indications for appellations of origin of goods that already registered in accordance with the provisions of Law on Intellectual Property regarding registration of geographical indications. Rights and obligations of industrial property right holders related to appellations of origin of goods shall comply with the provisions on geographical indications in Law on Intellectual Property."

Article 2. Come into effect

This Decree shall come into effect on February 20, 2011.

Article 3. Responsibility for guiding the implementation

1. The Minister of Science and Technology shall guide the implementation of this Decree.

2. Ministers, Heads of ministerial-level agencies, Heads of government-attached agencies, and chairpersons of provincial-level People's Committees shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung
